(24,641)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 411.

GEORGE D. ROGERS, FRANK E. CRANDALL, ET AL., APPELLANTS,

vs.

THE COUNTY OF HENNEPIN, HENRY C. HANKE, AS ITS COUNTY TREASURER AND INDIVIDUALLY, AND AL P. ERICKSON, AS COUNTY AUDITOR AND INDIVIDUALLY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 24, 1915.

1 United States District Court, District of Minnesota, Fourth Division.

GEORGE D. ROGERS, FRANK E. CRANDALL, and ALFRED L. GOETZMAN, Each as Representing Himself and Others of a Similar Class, Plaintiffs,

vs.

THE COUNTY OF HENNEPIN, HENRY C. HANKE, as its County Treasurer and Individually, and AL P. ERICKSON, as County Auditor and Individually, Defendants.

Pleas before the Honorable the Judges of the District Court of the United States of America for the District of Minnesota, for the October term, A. D. 1913, of said court, held in the city of Minneapolis, in said district, in the year 1914.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that on this 31st day of December, 1913, came the plaintiffs above named by H. V. Mercer their solicitor and Messrs. Mercer, Swan & Stinchfield their counsel, and filed in the clerk's office of said court their bill of complaint herein, which said bill of complaint is in the words and figures following, to-wit:

2 (Copy.)

United States District Court, District of Minnesota, Fourth Division.

GEORGE D. ROGERS, FRANK E. CRANDALL, and ALFRED L. GOETZMAN, Each as Representing Himself and Others of a Similar Class, Plaintiffs,

vs.

COUNTY OF HENNEPIN, HENRY C. HANKE, as its County Treasurer and Individually, and AL P. ERICKSON, as County Auditor and Individually, Defendants.

Bill in Equity.

To the Honorable Judges of the District Court of the United States for the District of Minnesota:

For their bill of complaint herein the plaintiffs allege:

1. That the plaintiff George D. Rogers is a citizen and resident of the City of Minneapolis, County of Hennepin, State of Minnesota, as is each of the others of the class for which he brings this bill as herein stated; that the plaintiff Frank E. Crandall is a citizen and resident of the City of Mankato, State of Minnesota, as is each of the others of the class for which he brings this bill, a citizen and resident of the State of Minnesota outside of Hennepin County, as hereinafter

stated; that the plaintiff Alfred L. Goetzman is a citizen and resident of the City of La Crosse, State of Wisconsin, as is each of the others of the class for which he brings this bill, a citizen of either Wisconsin or another state outside of Minnesota; that the said plaintiffs, with 447 others, a large portion of whom are in one of each of the respective classes of citizenship and residents stated for these plaintiffs, are now and were during the times mentioned in this complaint members of the Chamber of Commerce of Minneapolis, a corporation, holding certificates of membership under the conditions hereinafter stated, at their respective residences where each also had his domicile and where the situs of such memberships existed when taxed. That this bill is brought on behalf and with the authority of all of said members.

II. That the jurisdiction of this, the Federal Court, herein,
3 depends upon the facts that this is a suit of a civil nature in equity, where the matter in controversy exceeds, exclusive of interest and costs, the sum and value of $3,000, and arises under the Constitution and laws of the United States because of the violation of the — State of Minnesota, through its taxing officers and departments, and particularly through the above named defendants by:

(*a*) Denying to each and all of the plaintiffs due legal protection by taking their property, and depriving them of it, without due process of law;

(*b*) Denying to each and all of them, both within and without its jurisdiction, the equal protection of the laws.

(*c*) That the jurisdiction as to the equity side of the court depends upon the matters above stated and the further prevention of a multiplicity of suits and defenses wherein, out of the same transaction, 550 suits and defenses by as many different individual plaintiffs or defendants would be required to settle the questions in controversy, while under this method the whole questions can be settled in this one action; that said defendants are about to enter upon the records of said County, assessments upon the memberships in said corporation, to become individual claims against each of said 550 members, which assessments were made by the taxing officers of the State without warrant of state law, either valid or invalid; that the enforcement of the said attempted assessments is now in the hands of the above named defendants and they are demanding payment thereof from the individual plaintiffs in advance of the time when the payments would ordinarily be due if valid, and threatening their enforcement as if valid, and that there is no adequate remedy at law for the plaintiffs, all of the facts of which jurisdictional and equitable matters more fully appear hereinafter.

III. That the Chamber of Commerce of Minneapolis is an institution incorporated under Chapter 138 of the General Laws of Minnesota for the year 1883; that said institution is a corporation in the
4 nature of a voluntary association similar in principle, organization, conduct, membership control, and relations among its members, to the relations of membership and control in social clubs, fraternal societies, the Associated Press and voluntary busines

associations generally, in the state of Minnesota, and that the rights of admission, use and disposal of such memberships, is equally limited in it.

III*a*. That each of the plaintiffs is a member of said corporation in the classes described herein; that said Frank E. Crandall is a resident of Mankato, Blue Earth county, Minnesota, and joins in this bill, on behalf of himself and all other members who are residents and citizens of other localities within said State, outside of the city of Minneapolis, of which there are 58; and even if said memberships were taxable it would be at their respective residences; that said Alfred L. Goetzman is a citizen and resident of La Crosse, Wisconsin, and joins in this bill on behalf of himself and all other members who are residents and citizens of states other than Minnesota, of which there are 50; that all of said named classes of members are too numerous to be made parties plaintiff herein; that all of the memberships held by said members, outside of those where the parties are residents of the city of Minneapolis, Minnesota, are cases in which the certificates of membership are kept at their respective residences, and the said respective members do not operate upon said Exchange personally, unless it be at rare intervals, but their use of such memberships is practically limited and confined to the benefits they get from having other members buy or sell grain for them as commission merchants, getting one-half the rates of regular commission, by reason of such a privilege extended to the members under the rules of said Association; that all of the matters in this paragraph alleged existed during all the times mentioned in this complaint, and especially during the times when the assessments herein mentioned were made and thereafter; that the plaintiff Rogers represents himself and all members residing in Minneapolis, and there are a few memberships of deceased individuals where new members have not been elected.

IV. That said association has no capital stock and is not a stock corporation; that it transacts no business for profit, and is limited in its business to the owning and furnishing of buildings and sufficient equipment to enable its members to have offices upon its premises and to control the affairs of its members in their relations with each other and it; and it is a grain exchange wherein the members transact business for themselves and their customers only and not for said association; that it also has rules and regulations under and by which the interests of every member in it and in, and to their memberships in it are held subordinate to its rules and regulations for admission, its rules and regulations for control, and liens upon those memberships for debts owing to other members under and by virtue of dealings had in said association, and in the control of such memberships and the members and in the power of fine, suspension or expulsion over such members from the memberships in said association; that every member who becomes such in said association, must and does first apply for membership therein in writing, and agree to abide by the charter rules and regulations, all amendments thereto, and also the usages and customs of the Chamber of Commerce; that he must also present a certificate of membership to

which, subject to the approval of the board of directors of said association, he is the owner; that he is then investigated and may be refused membership without excuse; that he must possess good business character and integrity and have an individual standing before he can acquire such membership; that, if admitted, he is subject to a control, through the rules and regulations of said association, more stringent than the law would ordinarily prescribe upon members of a stock association, such as prohibitions against his reliance upon the statute of frauds as a defense, the transacting of business in such a way as to amount to uncommercial conduct, or such other regulations as would make him unfit to do business according to the highest spirit of business principles with his associates, and subject to his
6 expulsion, suspension or fine for the violation of such principles irrespective of whether they would be offenses against the law generally; that he does not acquire control of or own such membership except subject to the will of the members generally and such rules and regulations as a majority of them shall from time to time declare; that he cannot sell the same of his own will, nor can he rent or assign the same, nor use it as collateral; that it does not descend in case of death of the member, but is sold out and the proceeds used to pay such obligations as are owed by the member to other members and those owed by him to the association, with only the surplus, if any, in money descending; that under no circumstances or conditions can he own, sell or convey the intangible privileges therein.

V. That to better facilitate the regulation of admission, control and disposition of memberships, the said association has general rules by which membership certificates are issued and by which one was issued to each of these plaintiffs upon his agreeing, according to the usual practice, to be governed by the usages and customs of the charter rules and regulations of said association and all additions and amendments to such rules and regulations, and that a compliance therewith shall be and remain a condition precedent to the sale and transfer of his membership and his rights therein; that each and every member of said association acquires a membership according to the rules and regulations and the conditions above described and in no other way; that a membership certificate under such conditions is issued whenever the member is approved in accordance with such rules, and not until then, and he cannot transfer it into the name of any other person except through the same processes and subject to the same conditions.

VI. That the said memberships do not represent the ownership of property in said association except simply in the way that memberships in such voluntary organizations as above mentioned would represent property in equity.

VII. That the said Chamber of Commerce of Minneapolis as a
7 corporation owns buildings and personal property for the carrying on of its business as aforesaid, all of which have been fully and completely taxed in the city of Minneapolis, county of Hennepin and state of Minnesota for the year 1913; and said corporation has no property that has not been fully taxed, and it

has no good will that produces any profit to it or that is attempted in any way to be used for profit to it; that no one of such memberships is used for profit except by the individual member, and then his profit depends entirely upon his business ability, even though he uses said membership.

VIII. That said memberships have actually no tangible value above the assets already fully taxed to said association as assets are generally taxed to associations of the classes above mentioned in the state of Minnesota; that said memberships sometimes have varied prices offered and bid for them as a means of representing the interest in the tangent property, and sometimes a sort of premium for intangible privileges, such as would be paid for quick admission to clubs, and other voluntary associations hereinbefore mentioned; that the premium sometimes paid for that intangible privilege beyond the property not otherwise taxed to said association is such as if taxed as an asset under the rules of the state for taxable property would only be about $550.00; that said value was and is entirely a contingent one and conditioned upon the rules and regulations for acquisition, control and disposal as above set forth, and the business character of the member and did not represent property that could be acquired, controlled or disposed of except with the consent and subject to the regulations of said association, beyond and outside of legal obligations.

IX. That for about thirty (30) years, and during the whole period of the life of the law under which said organization was created, this association and others in the state of Minnesota of similar kind have existed and paid their taxes upon their assets in the regular way, and it has constantly been the construction of the laws of taxation throughout the state until the year 1912 that such
8 memberships, like those of lodges, fraternal orders, that of the Associated Press, etc., were not and are not taxable under the laws of Minnesota; that it was discovered about that time that the said association was being unjustly taxed by the local taxing officers greatly and arbitrarily in excess of other persons owning similar property; that an application was made which finally reached the Minnesota Tax Commission, to reduce such taxes and upon a hearing which the County resisted, it reduced the valuation about $171,500.00 for the previous year; that the state had passed certain legislation for taxing the grain of farmers in terminal elevators in the city on a different basis from the former method; that one of the taxing officers then threatened to get even by taxing the memberships and requiring them to either pay for said matters or spend some money fighting.

X. That there are five hundred and fifty (550) members of said association, and this action is brought on behalf of all of them; that they were each taxed by the taxing officials of the city of Minneapolis upon said memberships at the rate of thirty-five hundred dollars ($3500) apiece for the year 1912, under "Moneys and Credits", just as if the assets of the corporation had not been taxed and as if such memberships were property in the general sense; that when it was heard that said members were in fact resisting said assessment,

it was again threatened by the taxing officer immediately in charge that "there has been a decision in Duluth that makes it possible to assess those memberships as personal property; and we will assess them at $1,100.00 and let the members whistle;" that they were so assessed for 1913 as personal property without any warrant of statutory or other law, and individual claims are thus attempted to be created at $38.77, irrespective of their residence, and irrespective of the assessment against all of the assets of said corporation; that before the assessment of 1913 an attempt was made by the state to get its legislative department to pass a law that would tax such memberships but the legislature declined to pass it; that the memberships

9 in the Associated Press, lodges, fraternal orders and other business associations having similar memberships, and of the same class generally, were not taxed in said city, although standing in a similar position, and some of them selling contingently for a much higher price, and that no other institution of this or any other class in Minnesota, whether organized under this same or a different law, has been subjected to double taxation as this makes upon these memberships; that a discrimination was and is thereby made, not only unlawfully but prejudically as against these plaintiffs, and the other members of said association by unequally and doubly assessing them individually and taking their property without due process of law, contrary to both the state and federal constitutions; that such assessments of the said memberships and the failure to assess those of such other classes above mentioned was and is a deliberate and studious attempt to assess and made an assessment of such memberships arbitrarily and unequally with those of the same class, and that it amounts to a discrimination, unequally and arbitrarily, against these plaintiffs, contrary to Section 1 of Article 9 of the Constitution of Minnesota and Section 1 of Article Fourteen of the Amendments to the Constitution of the United States.

XI. That the plaintiffs duly appeared before the Board of Equalization of the city of Minneapolis and the Minnesota Tax Commission acting as the State Board of Equalization, as they appear herein, and set up the facts and asked to have the said assessments cancelled, and, if not cancelled then reduced; that said Boards were each inclined to grant the said application, or apparently so, but respectively declined to enable the courts to pass upon whether or not the memberships were property in a taxable sense which could be reached by the laws of Minnesota now in force.

XII. That the plaintiffs have an action pending in the Minnesota Supreme Court on the taxation for "Money and Credits" yet undecided and the hope of a favorable decision before the end of this year has caused this delay to prevent further litigation.

XIII. That the said County of Hennepin and the officers

10 above named threaten to and will, unless restrained or enjoined therefrom, immediately place the said taxes upon the records of this county and proceed to attempt to enforce them against each of said individuals; that the question is one wherein 550 defenses must be made, as they will be, if the taxes are permitted to be enforced unless there is injunctive restraint against the defend-

ants and it will make a multiplicity of litigation and a hardship upon each of the members compared to the amount involved, and a hardship and expensive litigation upon both the city of Minneapolis and the county of Hennepin and upon the state of Minnesota; that a speedy determination of the questions at issue should be made, if possible, in this one action, so as to prevent the necessity of the multiplicity of litigation otherwise following:

XIV. That the taxes upon the real estate of said corporation for this year are about $5,000.00, and the portions of the taxes levied that would be double taxation as against these members amount to at least $5,000.00 this year; that the said officers and the defendants threaten to continue, year in and year out, permanently, the assessment of both the property and the memberships, and to make the exemption of memberships of other similar institutions; that they have treated the matter in the assessment, before the Boards of Equalization, and the Tax Commission as one subject; that they threaten that unless said taxes are paid they will take both the property and the memberships, which property is worth several hundred thousand dollars and each and every membership is conditionally worth in excess of $3,000.00, exclusive of interest and costs when treated with its equitable interests in the said property, that the said respective defendants, unless restrained therefrom by this court, will continue said assessment indefinitely against such property and such memberships and annually subject these plaintiffs and all those whom they represent, to the prosecution or defense of multitudinous suits to protect their interests in the premises.

11 XV. That the names of the members of said Chamber of Commerce with their addresses at the time of said assessment, and who appear herein by said representative plaintiffs, are as shown by Exhibit "A" hereto attached and hereby made a part hereof; that the rules and regulations of said Chamber of Commerce voluntarily made by said members and in force at the time of the assessment made, and now make, the relations of each membership and the value thereof interdependent upon the rights and restrictions in favor of each of the other memberships; that said assessment was necessarily made as a joint action by said assessor as against all of said members reckoned collectively; that in making said assessment the assessor necessarily reckoned that said members were jointly interested in the real estate of said corporation and that their memberships jointly got their principal value therefrom; and that they each and all stood in exactly the same position except as to residence; that in passing upon the validity of said assessment each of the Boards of Equalization necessarily considered said memberships in respect to their joint relations with each other and as to their joint interests in the corporate assets; that plaintiff further alleges that said memberships are so interwoven with their relations to, and rights upon, each other, and as to said real estate as to require consideration and decision thereof as an indispensably joint matter; that said assessment was and is a second assessment upon the joint assets of said members held by said corporation; that their relations are such that a determination of the facts and law when made

whether as to one or all must be as a whole and bind all and the effect of the judgment and decree must necessarily involve their joint relations, rights and limitations upon all of the memberships and their joint rights in and to the assets of said corporation, and the joint action in the assessment and other treatment of said memberships in said proceeding and in this action; that said questions of joinder each involves an amount in excess of $3,000 in
12 value over and above interest and costs.

XVI.

That the said defendants now threaten to have the said memberships taxed in the same way for a period of five or six years back, although the said Chamber of Commerce during each of those years paid more than $5,500.00 a year for taxes in excess of what was either legal or equitable, upon its property, which amount was without the knowledge of the members, assessed against said Chamber for the purposes of indirectly reaching its memberships when they were not authorized by law to be taxed.

Wherefore, the plaintiffs pray your Honors to grant to them:

1. A temporary restraining order and temporary injunction preventing the defendants from enforcing the said taxes, or any of those threatened, pending the final determination of this cause.

2. That upon final hearing this court shall permanently enjoin the said defendants from enforcing such taxes and cancel and set aside the same and all thereof, and permanently enjoining them from either creating or enforcing any other taxes thereon.

3. For such other and further relief as to the court shall seem just and equitable in the premises.

4. To grant to your petitioners a subpœna issuing out of this court, in accordance with the equity practice, directed to said defendants and each of them, upon a day to be named therein, to appear in this court and to make answer unto all and singular the allegations in the complaint herein, answer under oath being hereby waived, and to also require them by order to show cause to answer the motion for temporary injunction hereto attached.

Dated December 31, 1913.

H. V. MERCER, *Solicitor for Plaintiffs.*
MERCER, SWAN & STINCHFIELD,
Counsel for Plaintiffs.

13 EXHIBIT "A."

Adkins, Arthur E.....Minneapolis, Minn.
Affeld, Wm. C..... "
Ainsworth, W. G..... "
Alt, G. E. .....Chicago, Ill.
Amsden, Chas. M.....Minneapolis
Anderson, C. E..... "
Anderson, W. A.....Winnipeg, Man.

Andrews, A. C. ..... Minneapolis
Andrews, J. C. ..... "
Andrews, J. P. ..... "
Andrews, L. C. ..... "
Ankeny, H. W. ..... "
Asekgaard, D. ..... Comstock, Minn.
Atkins, A. J. ..... Minneapolis
Austin, C. C. ..... "
Austin, Carl E. ..... "
Avery, J. W. ..... "
Bacon, E. P. ..... Milwaukee, Wis.
Bagley, G. C. ..... Minneapolis
Bagley, R. C. ..... "
Baker, B. E. ..... Duluth, Minn.
Barber, E. R. ..... Minneapolis
Barden, E. R. ..... St. Paul, Minn.
Barnes, Julius ..... Duluth, Minn.
Barrell, Finley ..... Chicago, Ill.
Bassford, E. P., Jr. ..... St. Paul, Minn.
Bean, F. A., Jr. ..... New Prague, Minn.
Beaton, W. L. ..... Minneapolis
Beaupre, F. B. ..... "
Bell, J. S. ..... "
Benson, B. F. ..... "
Benson, J. W. ..... Heron Lake, Minn.
Besser, Geo. ..... Minneapolis
Beutner, H. F. ..... "
Bingham, A. W. ..... New Ulm, Minn.
Bisbee, E. C. ..... Minneapolis
Bliss, H. D. ..... "
Bliss, H. S. ..... "
Blodgett, F. S. ..... "
Blossom, Geo. F. ..... "
Blythen, C. J. ..... "
Borgerding, C. ..... Belgrade, Minn.
Botterell, J. E. ..... Winnipeg, Man.
Bostwick, C. L. ..... Minneapolis
Boult, A. S. ..... "
Boyles, C. D. ..... Chicago, Ill.
Boynton, F. C. ..... Minneapolis
Brennar, A. E. ..... "
Bridgman, L. C. ..... "
Briggs, G. F. ..... "
Brisley, W. L. ..... "
Brooks, J. J. ..... Milwaukee, Wis.
Brooks, A. S. ..... Minneapolis
Brown, C. A. ..... "
Brown, Earle ..... "
Bean, F. A., Sr. ..... New Prague, Minn.
Brown, E. P. ..... Minneapolis
Brown, E. L. ..... "

Brown, E. W. .....Luverne, Minn.
Brown, L. E. .....Minneapolis
Bruce, Ralph ..... "
Buchanan, L. J. ..... "
Bullen, A. F. .....Red Wing, Minn.
Burns, C. T. .....Minneapolis
Butler, F. S. ..... "
Butler, Harry J. ..... "

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Carey, F. L. .....Minneapolis
Cargill, J. F. .....Deephaven, Lake Minnetonka, Minn.
Cargill, R. G. .....Minneapolis
Cargill, S. S. ..... "
Carlstrom, E. F. ..... "
Carnahan, F. G. .....Coronado, Cal.
Carr, F. B. .....Minneapolis
Carruthers, James .....Montreal, Can.
Carter, C. L. .....St. Louis, Mo.
Carter, O. P., Estate of ....Minneapolis
Case, C. M. .....Minneapolis
Geo. P. Case.....Wayzata, Minn.
Cassidy, J. J. .....Minneapolis
Cawcutt, E. A. ..... "
Chambers, T. H. ..... "
Chamberlain, F. A. .....Minnetonka Beach, Minn.
Chapman, Joseph, Jr. .....Minneapolis
Charles, G. M. ..... "
Christensen, C. A. ..... "
Christensen, C. S., Jr. .....Madelia, Minn.
Christensen, O. D. .....Minneapolis
Christian, G. C. ..... "
Clarke, Beers ..... "
Clough, L. H., Jr. ..... "
Cobb, A. E. ..... "
Cobb, S. L. ..... "
Commons, F. W. ..... "
Commons, H. W..... "
Cooper, J. B. ..... "
Cornwell, A. O. ..... "
Corse, I. L. ..... "
Cowles, W. P. ..... "
Crane, A. A. ..... "
Crandall, F. E. .....Mankato, Minn.
Crangle, B. C. .....Minneapolis
Crocker, W. G. ..... "
Crosby, F. M. ..... "
Crowe, G. R.....Winnipeg, Man.
Crowl, C. A. .....Minneapolis
Cunningham, T. E. .....Chicago, Ill.
Daggett, A. F. .....Minneapolis
Dahl, A. C. .....New Ulm, Minn.

Dalrymple, Wm. ..... Minneapolis
Dalton, S. A..... "
Davies, F. M. ..... "
Davis, C. R. ..... "
Deaver, Chas. F..... "
Decker, E. W. ..... "
Dent, A. R. T. ..... "
Devaney, M. R. ..... "
Devereux, W. P. ..... "
Dew, H. A. ..... "
De Wolf, D. F. .....St. Paul, Minn.
Dibble, E. R. .....Minneapolis
Dickey, H. G. ..... "
Dickinson, Chas. .....Chicago, Ill.
Dickinson, W. H. ..... Minneapolis
Diercks, E. W. ..... "
Diffenbaugh, H. J. .....Kansas City, Mo.
Dinsmore, R. A. ..... Minneapolis
Doebler, O. H. .....Cannon Falls, Minn.
Doherty, E. L. .....Minneapolis
Douglas, H. F. ..... "
Dow, J. F. .....Davenport, Ia.
Duensing, Geo. .....Minneapolis

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Dunn, F. E. .....Minneapolis
Dunwoody, W. H. ..... "
Eaton, C. A. ..... "
Eggleston, C. E. ..... "
Edgerton, L. ..... "
Elliott, J. K. ..... "
Ellis, F. H. ..... "
Fulton, Wm. ..... "
Emmitt, J. C. ..... "
Engstrom, D. ..... "
Erickson, O. H. ..... "
Everett, E. A. .....Waseca, Minn.
Ewe, G. F. .....Minneapolis
Fagg, Clark .....Milwaukee, Wis.
Falconer, J. W. .....Minneapolis
Feetham, G. H. ..... "
Fellows, C. S. ..... "
Fertig, H. G. ..... "
Fletcher, H. C. ..... "
Fowler, C. R. ..... "
Frank, H. O. ..... "
Fraser, J. D. ..... "
Fraser, J. F. ..... "
Fraser, W. T. ..... "
French (Estate of) C. E. . "
Fritsche, J. E. ..... "
Fruen, A. B. ..... "

Fuller, David ..... "
Gackle, Geo. .....Kulm, N. D.
Gage, J. P. .....Minneapolis
Gallaher, H. P. ..... "
Gallaher, R. H. ..... "
Garvin, H. C. .....Winona, Minn.
Gates, C. G. .....Minneapolis
Gee, G. E. ..... "
Gee, H. D. ..... "
Geggie, J. C. ..... "
Gerlach, B. .....Red Wing, Minn.
Getchell, J. E. .....Minneapolis
Getchell, P. B. ..... "
Gibson, Thomas .....Duluth, Minn.
Giles, C. E. .....Minneapolis
Gilfillan, J. B., Jr..... "
Gill, F. D. ..... "
Gluek, Chas. ..... "
Goetz, A. W. ..... "
Godfrey, L. D. ..... "
Goldstein, C. E. .....Winnipeg, Man.
Gooch, W. H. .....Minneapolis
Gooding, W. G. ..... "
Goetzman, A. L. .....La Crosse, Wis.
Googins, C. L. .....Minneapolis
Gould, J. A. ..... "
Grant, M. E. ..... "
Graves, W. H. ..... "
Gregory, W. A. ..... "
Gregory, W. D. ..... "
Grettum, William .....Duluth
Griggs, C. W. ..... St. Paul, Minn.
Grimes, E. J. .....Minneapolis
Gruber, John D. ..... "
Gunderson, E. .....Mound, Minn.
Gunderson, G. B. .....Minneapolis

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Hall, H. J. .....Minneapolis
Hall, T. W. ..... "
Hallet, F. A. ..... "
Hankinson, F. L. ..... "
Hanlon, D. J. ..... "
Hanson, E. T. ..... "
Hanson, Thomas ..... "
Hardenberg, F. E. ..... "
Harding, G. P. ..... "
Harding, H. C. ..... "
Harper, G. C. ..... St. Paul, Minn.
Harper, G. S. .....Minneapolis
Harrington, C. M. ..... "

Hartwell, A. M. ..... "
Hartzell, J. R. ..... "
Harvey, H. J. ..... "
Hatch, W. B. ..... "
Haven, F. V. ..... "
Haynes, J. C. ..... "
Healy, R. J. ..... "
Heath, G. M. ..... La Crosse, Wis.
Heffelfinger, F. T. ..... Minneapolis
Helm, H. S. ..... "
Helm, W. C. ..... "
Henderson, Wm. L. ..... St. Paul, Minn.
Hennessey, J. P. ..... Minneapolis
Hiniker, Jacob ..... Hastings, Minn.
Hinkley, Frank N. ..... Minneapolis
Hokanson, John N. ..... "
Holbrook, F. G. ..... "
Holmes, P. R. ..... "
Holmquist, J. W. ..... Oakland, Neb.
Howard, L. A. ..... Minneapolis
Howard, W. A. ..... "
Howe, G. C. ..... "
Howe, P. L. ..... "
Hubbs, Frank A. ..... "
Hughes, H. E. ..... "
Huhn, A. ..... "
Huhn, Alex. G. ..... "
Huntting, C. E. ..... "
Hurley, Frank ..... "
Hyde, Wilbur F. ..... "
Hudson, W. G. ..... "
Ingold, P. M. ..... "
Ireys, V. S. ..... "
Jackson, A. S. ..... Chicago, Ill.
Jaffray, C. T. ..... Minneapolis
James, E. A. ..... Chicago, Ill.
Jenks, J. M. ..... "
Johnson, C. E. ..... Minneapolis
Johnson, D. F. ..... "
Johnson, E. H. ..... "
Johnson, Marcus ..... St. Paul, Minn.
Johnston, H. H. ..... "
Johnston, R. J. ..... Minneapolis
Johnston, R. M. ..... "
Johnston, V. A. ..... Portland, Ore.
Jones, E. W. ..... Minneapolis
Joyce, W. B. ..... "
Judd, E. J. L. ..... "
Junkins, C. D. ..... "
Kalman, C. O. ..... St. Paul, Minn.
Katzenbach, L. E. ..... "

17

Keith, H. B. ..... Minneapolis
Kellogg, Spencer ..... Buffalo, N. Y.
Kelso, J. P. ..... Minneapolis
Kennedy, Chas. ..... Buffalo, N. Y.
Kerwin, T. H. ..... Minneapolis
King, H. H. ..... "
King, P. E. ..... "
Kneeland, Yale ..... New York City
Krise, W. C. ..... Red Wing, Minn.
Kunz, Jacob ..... Minneapolis
Ladd, C. C. ..... Osceola, Wis.
Lamb, J. A. ..... Minneapolis.
Lamb, J. D. ..... Excelsior, Minn.
Lane, G. B. ..... Minneapolis
Latta, J. A. ..... "
Leffingwell, L. M. ..... St. Anthony Park, Minn.
Leistikow, W. C. ..... Winnipeg, Man.
Leland, E. F. ..... Chicago, Ill.
Lewis, C. E. ..... Minneapolis
Lewis, T. W. ..... "
Lindquist, K. A. ..... "
Little, R. W. ..... "
Lockerby, C. E. ..... "
Loring, A. C. ..... "
Lowitz, E. ..... Chicago, Ill.
Logan, Stuart ..... Chicago, Ill.
McCabe, W. J. ..... Duluth, Minn.
McCarthy, F. H. ..... Minneapolis
McCarthy, H. F. ..... "
McCarthy, J. H. ..... "
McCarthy, J. H., Jr. ..... "
McCarthy, J. V. ..... "
McCarthy, T. G. ..... "
McCaull, J. L. ..... "
McCaull, S. J. ..... "
McCord, F. M. ..... "
McCord, H. D. ..... "
McCord, T. M. ..... "
McDonald, D. A. ..... "
McGlynn, J. T. ..... "
McGregor, John ..... "
McIntyre, A. H. ..... "
McKindley, J. N. ..... Duluth, Minn.
McKinnon, D. ..... Minneapolis
McLaughlin, W. S. ..... "
McLeod, John ..... "
McMillan, J. D. ..... "
McMillan, P. D., Jr. ..... "
McNaghton, R. L. ..... "
MacMillan, D. D. ..... "

MacMillan, J. H. ..... "
Mackay, F. J. ..... Leamington, England
Macrae, J. ..... Minneapolis
Magnuson, C. A. ..... St. Paul, Minn.
Magnuson, M. G. ..... Minneapolis
Mairs, S. ..... St. Paul, Minn.
Malmquist, C. A. ..... "
Marboe, C. J. ..... La Crosse, Wis.
Marcy, Geo. E. ..... Chicago, Ill.
Marfield, J. R. ..... Minneapolis
Marshall, Jas. ..... Deephaven, Minn.
Marshall, L. D. ..... Minneapolis
Martin, A. E. ..... "
Martin, G. R. ..... "
Martin, J. R. ..... "
Martin, Wm. ..... Winnipeg, Man.

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Martin, W. L. ..... Minneapolis
Masters, A. T. ..... "
Mathewson, C. ..... "
Mathewson, J. R. ..... "
Mathewson, J. S. ..... "
Mattison, J. A. ..... "
Meyers, L. K. ..... "
Miller, H. J. ..... "
Miller, H. W. ..... "
Miller, J. C. ..... "
Miller, W. G. ..... "
Miller, W. J. ..... "
Mirick, E. H. ..... "
Mitchell, E. E. ..... "
Moffit, N. L. ..... St. Louis, Mo.
Mohler, W. B. ..... Minneapolis
Moreton, H. J. ..... "
Moritz, A. G. ..... "
Morris, G. A. ..... "
Morse, S. ..... "
Morris, J. R. ..... New Prague, Minn.
Mull, J. A. ..... Minneapolis
Murfin, G. W. ..... Eureka, Minn.
Murray, T. B. ..... Minneapolis
Murray, T. E. ..... "
Nelson, A. P. ..... Grove City, Minn.
Nelson, J. A. ..... Minneapolis
Neiler, W. E. ..... "
Newell, H. S. ..... Duluth, Minn.
Newhouse, O. T. ..... Minneapolis
Noernberg, F. D. ..... "
Norby, A. J., Estate of ..... Wales, N. D.
Norton, F. M. ..... Minneapolis

Norton, J. R.	"
Norton, W. H.	"
Nutter, E.	"
Olson, N.	"
Olson, N. J.	"
Olson, O. F.	"
Osborn, E. F.	"
Osborne, E. N.	"
Owen, A.	"
Owen, A. F.	"
Owens, C. M.	Mankato, Minn.
Palmer, G. M.	Minneapolis
Pank, J. H.	Winona, Minn.
Parsons, W. B.	Chicago, Ill.
Patten, J. A.	Minneapolis
Patton, A. E.	"
Pettit, F. R.	Bowman, N. D.
Phelan, J. E.	Minneapolis
Phelps, E. J.	"
Phelps, E. L.	Chicago, Ill.
Pierce, C. B.	Minneapolis
Pillsbury, A. F.	"
Pillsbury, C. S.	"
Pillsbury, J. S.	"
Piper, G. F.	"
Poehler, A. H.	"
Poehler, C. F.	"
Poehler, W. A.	"

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Poehler, W. C.	Minneapolis
Porter, G. W.	"
Powers, W. K.	"
Putman, H. B.	"
Putman, H. C.	"
Quinn, John J.	"
Ramsey, W. A.	"
Rand, A. T.	"
Rand, R. R.	"
Ray, W. I.	"
Raymond, D. L.	"
Regan, J. A.	Fessenden, N. D.
Remund, L. C.	Minneapolis
Richter, F. A.	"
Riebe, F. C.	"
Riegger, G. G.	"
Riheldaffer, J. H.	"
Ritten, L. N.	"
Robson, Geo. E.	Duluth, Minn.
Rogers, G. D.	Minneapolis

Rogers, P. A. ..... "
Rompage, H. C. ..... "
Russell, W. J. ..... "
Rutherford, P. C. ..... "
St. John, B. P. ..... Heron Lake, Minn.
Sammis, T. A. ..... Minneapolis
Sammis, W. D. ..... "
Sanborn, G. E. ..... "
Sanford, L. B. ..... "
Schroeder, J. A. ..... "
Scott, Wm. J. ..... "
Schober, E. E. ..... "
Scroggins, M. E. ..... "
Searle, A. L. ..... "
Seidl, F. J. ..... "
Sellar, O. K. ..... "
Sexton, C. W. ..... "
Sharpe, J. B. ..... Kulm, N. D.
Sheffield, B. B. ..... Minneapolis
Sheffield, C. S. ..... "
Sheldon, A. M. ..... "
Shepherdson, H. F. ..... "
Shultis, Mark ..... Boston, Mass.
Sidle, H. K. ..... Minneapolis
Siewers, J. B. ..... "
Simmons, B. L. ..... "
Sims, J. E. ..... "
Sims, R. G. ..... "
Small, O. V. ..... Fredonia, Kans.
Sorenson, H. ..... Minneapolis
Smith, E. H. ..... Duluth, Minn.
Smith, F. J. ..... "
Smith, Geo. C. ..... Minneapolis
Smith, M. W. ..... "
Smith, I. L. ..... "
Smith, W. L. ..... "
Snyder, F. C. ..... "
Sorenson, R. ..... Devils Lake, N. D.
Sowle, M. W. ..... Minneapolis
Spaulding, C. L. ..... Warren, Minn.
Spencer, G. H. ..... Duluth, Minn.
Stacks, Z. K. ..... Minneapolis
Stadon, J. H. ..... "
Stair, I. L. ..... "
Stair, J. E. ..... "
Stebbins, H. C. ..... Red Wing, Minn.

20

Stephens, R. S. ..... Minneapolis
Stern, Walter ..... Milwaukee, Wis.
Stevens, F. E. ..... Minneapolis

Stevens, L. R. ..... "
Stevenson, C. T. ..... "
Stewart, A. ..... "
Stewart, J. R. ..... "
Stockman, B. .....New Ulm, Minn.
Stratton, E. K. .....Minneapolis, Minn.
Stroud, P. E. .....Duluth
Stuhr, E. W. .....Minneapolis
Sturtevant, H. D. .....Chicago, Ill.
Sukey, P. G. ..... Minneapolis
Sullivan, J. M. ..... "
Sunwall, G. F. ..... "
Swan, G. A. ..... "
Templeton, W. L. .....Chicago, Ill.
Tenney, D. D. .....Minneapolis.
Tenney, F. C. ..... "
Terwilliger, E. G. .....Wayzata, Minn.
Thayer, C. E. .....Minneapolis
Thexton, W. ..... "
Thomas, W. A. ..... "
Thompson, A. H. ..... "
Thompson, T. J. ..... "
Thomson, A. D. .....Duluth
Tierney, W. J. .....St. Paul.
Truesdell, L. G. .....Minneapolis
Timerman, W. O. ..... "
Tubbs, C. R. ..... "
Tracy, J. L. ..... "
Tuttle, W. P. .....Dawson, N. D.
Tyner, F. J. .....Minneapolis
Updike, N. E. ..... Omaha, Neb.
Van Dusen, F. C. .....Minneapolis
Verhoeff, J. C. ..... "
Vogtel, C. .....New Ulm, Minn.
Wagner, C. D. .....Minneapolis
Wallace, C. S. ..... "
Wallace, J. M. ..... "
Walling, L. A. ..... "
Warner, E. C. ..... "
Warren, W. S. .....Chicago, Ill.
Washburn, John .....Minneapolis
Watson, H. P. ..... "
Watts, C. S. ..... "
Webb, W. B. .....Washaba, Minn.
Webster, D. .....Minneapolis
Wehmann, H. ..... "
Welch, E. L. .....St. Paul
Welch, T. H. .....Minneapolis
Welch, L. D., Sr. ..... "
Welch, L. D., Jr. ..... "
Wells, F. B. ..... "

Wells, H. D. ..... "
Wernli, H. A. ..... "
Whallon, J. F. ..... "
Wheeler, W. H. ..... "
Whelan, J. C. ..... "
White, J. F. ..... "
Williams, C. G. ..... "
Williams, S. G. ..... "
Williams, W. S. .....Minnetonka Beach, Minn.

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Wilson, G. S. .....Minneapolis
Windhorst, Wm. .....Olivia, Minn.
Winter, T. G. .....Minneapolis
Winters, L. L. .....Eureka, Minn.
Winton, D. N. .....Minneapolis
Wohlheter, Geo. ..... Fairmont, Minn.
Wommer, L. ..... Minneapolis
Woodward, A. M. ..... "
Woodward, M. H. ..... "
Woodworth, B. H. ..... "
Woodworth, E. S. ..... "
Woodworth, R. P. ..... "
Wyman, C. C. ..... "
Wyman, H. C. ..... "
Wyman, J. C. ..... "
Wyman, O. C. ..... "
Yeaks, F. O. ..... "
Zimmerman, O. A. ..... "
Zinn, C. C. ..... "
Zonne, A. E. ..... "

22 STATE OF MINNESOTA,
County of Hennepin, ss:

George D. Rogers, being first duly sworn, upon oath says that he is one of the plaintiffs in the foregoing entitled action; that he has read the foregoing complaint; that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

G. D. ROGERS.

Subscribed and sworn to before me this 31st day of December, 1913.

[NOTARIAL SEAL.] H. V. MERCER,
Notary Public, Hennepin County, Minnesota.

My commission expires May 3rd, 1916.

(Endorsed:) Filed December 31, 1913. Charles L. Spencer, Clerk, by George F. Hitchcock, Jr., Deputy.

23 And thereafter, and on the same day, a certain Notice of Motion and Order to Show Cause were filed of record in said cause, which said Notice and Order are in the words and figures following, to-wit:

24 Copy.

United States District Court, District of Minnesota, Fourth Division.

GEORGE D. ROGERS, FRANK E. CRANDALL, and ALFRED L. GOETZman, Each as Representing Himself and Others of a Similar Class, Plaintiffs,

vs.

COUNTY OF HENNEPIN, HENRY C. HANKE, as its County Treasurer and Individually, and Al. P. Erickson, as County Auditor and Individually, Defendants.

Notice of Motion.

To the Above Named Defendants:

You will each Take Notice that at the time specified in the attached Order, the plaintiff- will move the court as follows:

(1) For a temporary injunction restraining you and each of you from doing anything to enforce the taxes levied and assessed upon the plaintiffs and other members of the Chamber of Commerce, upon their memberships in said association for the year 1913, during the pendency of this action;

(2) For such other and further relief as to the court may seem just and equitable in the premises;

Which motion will be made and based upon the attached complaint and upon the ground that it will avoid a multiplicity of actions and prevent an injustice to the plaintiff- thereby.

Dated December 31, 1913.

H. V. MERCER, *Solicitor for Plaintiffs.*
MERCER, SWAN & STINCHFIELD,
Counsel for Plaintiffs, 510 *Security Bank Bldg., Minneapolis, Minnesota.*

25 United States District Court, District of Minnesota, Fourth Division.

GEORGE D. ROGERS, FRANK E. CRANDALL, and ALFRED L. GOETZman, Each as Representing Himself and Others of a Similar Class, Plaintiffs,

vs.

COUNTY OF HENNEPIN, HENRY C. HANKE, as its County Treasurer and Individually, and Al. P. Erickson, as County Auditor and Individually, Defendants.

Order to Show Cause.

Upon reading and filing the attached complaint, and upon all the files and records herein, it is hereby ordered:

That the hearing herein of the attached motion may be held on the 3rd day of January, 1914, at ten o'clock a. m. upon the Notice of Motion hereto attached; the time for said motion being shortened because of the urgency of the case, and defendants show cause at that time why the motion should not be granted.

Dated December 31st, 1913.

CHARLES A. WILLARD,
District Judge.

(Endorsed:) Filed Dec. 31, 1913. Charles L. Spencer, Clerk. by Geo. F. Hitchcock, Jr., Deputy.

26 And thereafter, to-wit: on the 3rd day of January, 1914, the following objections to jurisdiction and motion to discharge said order to show cause and dismiss motion for restraining order were filed of record in said cause, which said objections and motion are in the words and figures following, to-wit:

27 United States District Court, District of Minnesota, Fourth Division.

GEORGE D. ROGERS, FRANK E. CRANDALL, and ALFRED L. GOETZMAN, Each as Representing Himself and Others of a Similar Class, Plaintiffs,

vs.

COUNTY OF HENNEPIN, HENRY C. HANKE, as its County Treasurer and Individually, and Al. P. Erickson, as County Auditor and Individually, Defendants.

Come now the defendants in the above entitled action and object to the assumption of jurisdiction by this court and to the issuance of a restraining order herein and move the court to dismiss the said action, and to discharge the order to show cause issued out of this court on the 31st day of December, 1913, and dismiss the motion for a restraining order, and respectfully present in support of the motions to dismiss the action, and discharge and to dismiss the order to show cause and motion the following:

(*a*) That the amount in controversy in the above entitled action is less than Three Thousand ($3,000) Dollars and that no plaintiff herein has interest involving a sum in excess of Forty ($40.00) Dollars. 180 U. S. 379.

1. The complaint does not state facts sufficient to entitle plaintiffs to equitable or any relief and the restraining order should not be issued:

"Injunction will not lie to restrain collection of taxes on personal property merely because the tax is illegally levied." Clark v. Ganz 21 Minn. 387; 34 Minn. 317, State ex Rel. County Commissioners v. Dunn 72 Minn. 409.

In Bradish v. Lucken 38 Minn. 186 it is held:

"An injunction will not issue to restrain the collection of personal property taxes on the ground that a portion of the tax is illegal

where there is a complete and adequate remedy at law, solely, because there are numerous tax payers similarly situated." Citing in this case Guest v. Brooklyn, 69 N. Y. 506.

Sec. 889 Revised Laws 1905, and Sections 893 and 896 Revised — of Minn. 1905 give these plaintiffs an adequate remedy at law.

2. There is a defect of parties in said complaint in that 547 members whom the plaintiffs claim to represent are not named, and it does not appear from said complaint that plaintiffs are
28 authorized to bring such suit on behalf of such plaintiffs and in the absence of such showing that the interest of tax payers are not sufficiently in common to authorize a suit by one or more on behalf of all. 22 Cyc. 767. 25 Conn. 231.

The complaint alleges generally that the action is brought on behalf of others similarly situated but fails to show that the action is brought by their authority and fails to show any authority whatever to bring the same on behalf of 547 members who are not even named.

The question is very well stated in Dupage Co. v. Jenks et al. 65 Ill. on page 281

"It may be and is, no doubt true that many of the citizens of these towns felt themselves under at least moral obligation to lend the necessary support to the state, county, town and municipal governments under which they live and by which they were protected in their persons and property, and were willing to waive any irregularities that may have intervened in levying these taxes. They no doubt felt the duty they owed to support the state and county governments by paying these taxes."

Each individual has no doubt the legal right where a tax has been imposed upon him that he conceives to be illegal to contest its validity, but we are at a loss to comprehend how he thereby acquires the right to determine that his neighbor shall not pay a tax similarly imposed upon him. Each individual tax is a separate and distinct burden and stands wholly disconnected from that of other persons.

It is true, to avoid a multiplicity of suits, many persons — determine to contest the validity of a tax, may, if they choose; join in exhibiting a bill by becoming plaintiffs and parties to the record, but it can not be held that a litigiously disposed person may, on his own motion, file a bill in his own name and on behalf of all other tax payers of the county, and stop collection of all the revenue for the support of the state, the county, townships, cities, towns, schools and other municipalities."

In Youngblood v. Sexton 32 Mich. 406 the court says:

"No other complain-t has any joint interest with him in resisting this tax. The sum demanded of each is distinct and separate, and it does not concern one of the complainants whether another pays or not. All the joint interest the parties have is a joint interest in a question of law; just such an interest as might exist in any case, where separate demands are made of several persons."

In Newcomb v. Horton, 18 Wis. 594 It is held

"That plaintiff could not sue on behalf of the other tax payers but that each tax payer desiring relief sought must bring his

several action" and also see Barnes v. Beloit 19 Wis. 93 Cutting v. Gilbert 6 Fed. cases 3519 Dowes v. Chicago 11 Wallace 108.

3. The taxing power is supreme in the State.

29 In Nathan vs. Louisiana 8 How. (49) U. S. 73-82 the Court says:

"The taxing power of a state is one of the attributes of sovereignty and where there has been no compact with the Federal Government or cession of jurisdiction for the purposes specified in the Constitution this power reaches all the property and business within the State." Also see Catlin vs. Hull 21 Vt. 152. Duer vs. Small et al. 7 Fed. Cases 4, 116.

The two essentials of taxing power are jurisdiction of person or of the property.

The property of residents of Hennepin County, Minn., is certainly within the control of the taxing authorities of Minnesota, the State has jurisdiction of the property and person.

The property of residents of other counties in Minnesota is equally within the jurisdictior of the taxing officials, the State having jurisdiction of the property and person.

The property of non-residents of the State is taxable here, the State having one of the requisites, jurisdiction of the property, as it is invested in this state.

In Duer vs. Small 7 Fed. Cases 4, 116 the Court Held:

The law of the State of New York which provides that all persons doing business in the State as merchants, bankers or otherwise and not residents of the state shall be assessed and taxed on all sums invested in said business, the same as if they were residents of the state, is not a violation of the Constitution of the United States or otherwise illegal or void."

In 19 Fed. 359 it is held:

"The state has power as long as it does not trench upon the Constitution of the United States to tax all persons, property and business within its jurisdiction or reach, and whether any persons, property, or business is so within its jurisdiction is not a Federal question and must be determined by the State for itself". See also 45 Cent. Digest on Taxation, Sections 3 to 16.

4. The only ground upon which Plaintiffs could possibly ask the intervention of this Court is that of discrimination, and when plaintiffs cite as the basis of this claim that members of "Church Associations, Fraternal Orders, Clubs, etc." are not taxed this contention is so unreasonable and fallacious on its face that we do not believe that this Court will consider it.

5. If equity did interpose in this proceeding it would only be in case justice demanded to save parties expense and trouble. It is plain that if the restraining order were issued that the additional work involved for County officials would more than off-set
30 the saving in trouble to the tax-payer in defending in a tax proceeding where he has a complete and adequate remedy at law. It would be almost impossible for the defendants to comply with such a restraining order and it would involve an immense amount of work and a complete reconstruction of the tax records of

Hennepin County. See affidavits of Al. P. Erickson and Henry C. Hanke, attached hereto.

Wherefore defendants submit that this Court is without jurisdiction in this proceeding and move this Honorable Court to discharge the Order to show Cause issued herein and to dismiss the motion for a restraining order.

Respectfully submitted,

JAMES ROBERTSON,
County Attorney in and for Hennepin County, Minn., Solicitor for Defendants.
R. S. WIGGIN,
100 *Court House Bldg., Minneapolis, Minn.*

(Endorsed:) Objections to jurisdiction of U. S. Court. Affidavits and Motion to discharge. Order to show cause and dismiss motion for restraining order. Filed January 3, 1914. Charles L. Spencer, Clerk, By Clara M. Owens, Deputy.

31 And thereafter, to-wit: on the 3rd day of January, 1914, and on the 15th day of January, 1914, short affidavits were filed by both parties upon the motion for temporary injunction, but leaving the main portions of the complaint uncontroverted.

32 And thereafter, to-wit: on the 18th day of February, 1914, the following oral decision was rendered by the Court and order of dismissal filed in said cause, which said decision and order are in the words and figures following, to-wit:

33 United States District Court, District of Minnesota, Fourth Division.

GEORGE D. ROGERS, FRANK E. CRANDALL, and ALFRED L. GOETZMAN, Each as Representing Himself and Others of a Similar Class, Plaintiffs,

v.

THE COUNTY OF HENNEPIN, HENRY C. HANKE, as Its County Treasurer and Individually, and Al. P. Erickson, as County Auditor and Individually, Defendants.

This case came on to be heard on the 14th day of February, 1914, before Hon. Page Morris, U. S. District Judge, upon the motion of the plaintiffs for a temporary injunction restraining the enforcement of taxes levied upon the memberships of the plaintiffs and other members of the Chamber of Commerce in the City of Minneapolis.

Mr. Mercer appeared for the plaintiffs, and James Robertson and R. S. Wiggin for defendant.

After hearing the arguments of counsel and considering the same, the Court rendered the following decision, orally:

In this case I realize the peculiar circumstances surrounding these memberships to which my attention has been called.

In the case of Wheless v. St. Louis, 180 U. S. 379, the Court said at page 382:

"The 'matter in dispute' within the meaning of the statute is not the principle involved; but the pecuniary consequence to the individual party, dependent on the litigation, as, for instance, in this suit the amount of the assessment levied, as against each of the complainants separately. The rules of law which might subject complainants to or relieve them from assessment would be applicable alike to all, but each would be so subjected, or relieved, in a certain sum, and not in the whole amount of the assessment. If a decision on the merits were adverse to the assessment, each of the complainants would be relieved from payment of less than two thousand dollars. If the assessment were sustained, neither of them
34 would be compelled to pay so much as that."

The Supreme Court in that paragraph, it seems to me, has pointed out the principle and rule applicable to this case.

The trial court said in this same case, Wheless v. City of St. Louis, 96 Fed. 865, at page 866:

"The question is whether this court has jurisdiction to hear and determine this controversy. This question has received the consideration of the supreme court of the United States in many cases, and, as a result of them all, the following proposition may be considered as settled:

'If several persons be joined in a suit in equity, * * * and have a common and undivided interest, though separable as between themselves, the amount of their joint claim or liability will be the test of jurisdiction. But where their interests are distinct, and they are joined for the sake of convenience only, and because they form a class of parties whose rights or liabilities arise out of the same transaction, * * * such distinct demands or liabilities cannot be aggregated together for the purpose of giving this court jurisdiction.'

"Cases in which parties may aggregate their demands for jurisdictional purposes are illustrated by Shields v. Thomas, 17 How. 3, and other cases referred to in the leading case of Gibson v. Shufeldt, 122 U. S. 27, 7 Sup. Ct. 1066. The other class of cases in which complainants are not allowed to aggregate their demands for jurisdictional purposes are illustrated by Ex parte Baltimore & O. R. Co., 106 U. S. 5, 1 Sup. Ct. 35 and a large number of cases therein referred to, and also by cases cited and commented upon in Gibson v. Shufeldt, supra. It does not seem necessary to discuss or distinguish between these many cases. It will be found that they enforce
35 the distinction already pointed out. The question, therefore, now before the court for determination is, to which class does the case now under consideration belong? In my opinion, it clearly belongs to the class last mentioned. It is a case in which many parties may be proper, but not necessary. The whole relief to which all claim to be entitled could as well be secured at the suit of any one of them. In other words, the controversy is several in its nature, in its object, and in its result. The right to be protected is several and individual. The wrong to be redressed is personal, and not collective in any sense. The matter in controversy between complainant Wheless and the city of St. Louis is one which concerns Wheless alone, and the right of the city to take his property, and the right to the

tax which it might impose, is in no manner dependent upon whether the city proceeds against any one or more of the complainants in this case. It may be, and undoubtedly is true, that some of the facts available to Wheless may also be available to complainant Barnhart,—in other words, that their rights or liabilities arise out of the same transaction, or the same unlawful action threatened to be taken by the defendants, and that their rights may be affected by the same facts,—but these circumstances do not entitle them to aggregate their demands for jurisdictional purposes."

Now it seems to me that the case at bar is ruled by this case of Wheless v. City of St. Louis which was decided by Judge Adams of this circuit, and affirmed by the Supreme Court of the United States, using the language which I have quoted. It is true that, according to the allegations of the bill, there is a peculiar situation here; that these memberships are, as it were, interlocked with each other, that there is a common property there, and all that sort of thing. But the question to be determined, the ultimate question which this litigation is to determine, is whether or not each one of these
36 memberships is subject to the tax which has been levied against it—whether or not each one of these members is individually liable to have the tax assessed against him for that membership. That is the only question in this case.

It is true that the court will have to decide that question upon the evidence of the relation, co-relation, or interrelation of the members of this association; of their common property, and whether or not part of this property has already been taxed, and if so what part. Also evidence relating to the privileges which they enjoy by reason of these memberships, and the restrictions upon the sale thereof, also as to the fact that there is no stock of the association, and their community of interest therein. All these things are simply facts, which, with the surrounding circumstances, are to be taken into consideration in determining the ultimate question whether or not each one of these members is liable for the particular tax which has been levied against him. That is the final thing to be decided.

As I have said, it seems to me that the question now under consideration is ruled by this case of Wheless v. City of St. Louis decided in the 96th Federal Reporter and subsequently affirmed by the Supreme Court of the United States in Vol. 180 Supreme Court Reports.

As to the other question, it seems to me that under the peculiar provision of our statute these plaintiffs have a complete and adequate remedy in an action at law to recover back these taxes. But I do not think that it is necessary to consider that.

I think this bill ought to be dismissed for lack of jurisdiction, because I do not think that you can sum together these assessments against the individual members, and thus get the required jurisdictional amount.

The bill will be dismissed with costs.

PAGE MORRIS, *Judge.*

Dated February 18, 1914.

(Endorsed:) Oral Decision: Filed February 18, 1914, Charles L. Spencer, Clerk, by Clara M. Owens, Deputy.

37 United States District Court, District of Minnesota, Fourth Division.

GEORGE D. ROGERS, FRANK E. CRANDALL, and ALFRED L. GOETZMAN, Each as Representing Himself and Others of a Similar Class, Plaintiffs,

vs.

THE COUNTY OF HENNEPIN, HENRY C. HANKE, as its County Treasurer and Individually, and Al. P. Erickson, as County Auditor and Individually, Defendants.

The above entitled cause being regularly upon the calendar of said court came on regularly for hearing before the undersigned at the court rooms in the Federal Building, in the City of Minneapolis, in said District Court on Saturday, the 14th day of February, 1914, upon the application of the plaintiffs for a temporary injunction preventing the defendants from enforcing certain taxes assessed against said plaintiffs and 547 other persons as members of the Chamber of Commerce, assessed as personal property for the year 1913, in the sum of $38.77, as against each of said members and upon the counter-motion of said defendants to dismiss the said action and to discharge the order to show cause upon the ground that the amount in controversy was not sufficient to enable this court to assume jurisdiction and that said plaintiffs could not aggregate their claims for the purpose of conferring jurisdiction.

Messrs. Mercer, Swan and Stinchfield appeared as attorneys for said plaintiffs, and Messrs. James Robertson and Richard S. Wiggin as attorneys for the said defendants.

And the Court *after* hearing the arguments of the respective parties and being fully advised in relation to said suit

It is ordered, that said order to show cause be and the same hereby is discharged.

It is further ordered that the motion to dismiss be and the
38 same is hereby in all things granted, upon the ground that the amount in controversy as to each of said plaintiffs is the sum of $38.77 and no more and that said plaintiffs and those whom they claim to represent cannot aggregate their claims for the purpose of conferring jurisdiction on this court.

It is therefore ordered that the above entitled action be and the same is in all things dismissed.

Let judgment be entered accordingly.

Dated, Minneapolis, Minn., Feb'y 16, 1914.

By the Court:

PAGE MORRIS, *Judge.*

A stay of 42 days is hereby allowed, and an exception to this order and all its parts is hereby allowed to the plaintiffs.

PAGE MORRIS, *Judge.*

(Endorsed:) Order of Dismissal Filed February 16, 1914. Charles L. Spencer, Clerk, by Clara M. Owens, Deputy.

39 And thereafter, to-wit: on the 28th day of February, 1914, an exception was allowed to the plaintiff by the Court upon its ruling to dismiss the cause and deny all relief; and a certificate in due form as to the transcript, pleadings and exhibits was made and allowed by the trial court.

And thereafter, to-wit: on the 28th day of February, 1914, there was filed in the trial court herein, a petition for allowance of an appeal with Supersedeas in regular form and an Assignment of Errors and Prayer for Reversal, containing twenty-five alleged errors, some of which are made upon jurisdictional points and some upon the merits, and on the same day the Court entered its order in regular form allowing that appeal to the United States Circuit Court of Appeals for the Eighth Circuit, with an Undertaking which, by written stipulation of counsel, operated as a supersedeas bond upon that appeal; the Court then issued a Citation under date of February 28, 1914, which was served upon that date and the usual transcript of record was sent to the Circuit Court of Appeals; the cause was put on for argument at Denver, Colorado, at a term of the said Circuit Court of Appeals and argued on September 15, 1914, at which time, a motion was made to dismiss that appeal upon the theory that the question of jurisdiction alone had been determined by the trial court and the said Circuit Court of Appeals subsequently filed its order holding in effect that the lower court only decided the question of jurisdiction and that therefore, the appeal lay alone to the Supreme Court of the United States. Upon the filing of that opinion and in order to hasten the Mandate, counsel entered a stipulation to allow it to be returned without the
40 usual sixty day delay, and the Mandate reached the trial court on the 16th day of February, 1915; thereupon an order to show cause with a Notice of Motion was entered in the trial court, which said order to show cause and notice of motion are in the words and figures following, to-wit:

41 United States District Court, District of Minnesota, Fourth Division.

GEORGE D. ROGERS, FRANK E. CRANDALL, and ALFRED L. GOETZman, Each as Representing Himself and Others of a Similar Class, Plaintiffs,

vs.

THE COUNTY OF HENNEPIN, HENRY C. HANKE, as its County Treasurer and Individually, and Al. P. Erickson, as County Auditor and Individually, Defendants.

To the above-named Defendants and to John M. Rees, their counsel:

You will please take notice, that on the 18th day of February, 1915, at ten o'clock, A. M., the plaintiff in the above entitled cause will move the court herein, at its Chambers in Duluth, Minnesota, to fix the amount of Supersedeas Bond in the form of an Undertaking to allow an appeal to the Supreme Court of the United States

of America, in said cause, with a certificate that the question of jurisdiction alone was decided by the Court, and that upon the filing and approval of the supersedeas, as directed by the Court, it then stay all proceedings in the subject matter of this litigation, excluding the time of this stay from the time necessary for the performance of the duties of the defendants in the tax proceedings in question, and for such other and further relief as the Court shall deem just and equitable in the premises, which motion will be made and based upon the attached affidavit and all of the files and records herein.

H. V. MERCER,
MERCER, SWAN & STINCHFIELD,
Counsel for Plaintiffs.

Dated this 16th day of February, 1915.

On reading and filing the attached notice of motion and
42 affidavit it is hereby ordered that defendants show cause, if any they have, why said motion should not be heard and granted at the time and place specified in said notice.

WILBUR F. BOOTH,
District Judge.

Dated this 16th day of February, 1915.

43 United States District Court, District of Minnesota, Fourth Division.

.. Equity. No. 22.

GEORGE D. ROGERS, FRANK E. CRANDALL, and ALFRED L. GOETZman, Each as Representing Himself and Others of a Similar Class, Plaintiffs,

v.

THE COUNTY OF HENNEPIN, HENRY C. HANKE, as Its County Treasurer and Individually, and Al P. Erickson, as County Auditor and Individually, Defendants.

STATE OF MINNESOTA,
County of Hennepin, ss:

H. V. Mercer, being duly sworn on oath deposes and says:

I.

That he, as counsel, has conducted this case on behalf of the plaintiff-.

II.

That, because of the nature of the order and decree made herein, affiant was in doubt as to whether or not, some matters outside of the ruling upon jurisdiction might be considered decided unless an appeal was first taken to the United States Circuit Court of Appeals for the Eighth Circuit.

III.

That the decree herein was made and entered on the 18th day of February, 1914; that an appeal was taken with a supersedeas undertaking on the 28th day of February, 1914, to operate as a bond for costs and damages and a stay of the judgment made; that the case has been remanded today from the Circuit Court of Appeals, which court held that the appeal should have gone to the Supreme Court to determine the jurisdictional question; that this affidavit is made for the purpose of enabling an application to be made to the trial court, as soon as the mandate is returned, to fix and allow a supersedeas bond in the form of an undertaking to cover costs and damages for an appeal to the Supreme Court of the United States of America, and to grant a stay suspending the collection of taxes and the
44 accrual of penalties on account of the matters set forth in the complaint herein.

IV.

That after an appeal was taken to the Circuit Court of Appeals, the County Officers of the County of Hennepin, State of Minnesota, undertook to enforce the taxes of 1913, involved in this case; that the sheriff had papers in his possession to serve on some of the members whose rights were involved in this action; that to prevent any further proceedings in that matter, an order was obtained from the State Court, granting all of the members of said Chamber, the right to answer in said tax proceeding until sixty days after the return of the Mandate from the Circuit Court of Appeals to this court; that affiant has attempted to get a continuation of that stipulation with a supersedeas and a stay to enable this case to be appealed to the Supreme Court, leaving the subject matter where the rights of the parties can be protected; that affiant has been advised of the attitude of said county officers toward the taxes of 1913, and subsequent years as follows:

"Office of County Attorney, Hennepin County.

MINNEAPOLIS, MINN., February 5, 1915.

Mr. H. V. Mercer, City.

DEAR SIR: In the matter of the taxation of memberships of the Chamber of Commerce about which you yesterday conferred with Mr. Erickson, county auditor, and myself, would say: that the county officials have since conferred on this matter and now feel that it is their duty to proceed to collect all taxes due and to make all future assessments, and they feel further that they are not authorized to enter into any arrangements which would relieve them from this duty.

As you know, I merely represent them and their views must necessarily be mine.

Very truly yours,
(Signed) JOHN M. REES,
County Attorney."

V.

That the members cannot pay their taxes and preserve their rights so that they can determine this litigation upon the
45 merits, or determine the jurisdictional question here upon the merits as affiant is informed and believes; that it is necessary in the interests of justice that a proper supersedeas bond be fixed upon the appeal herein to allow the defendants to be secure from such damages as would result from the appeal, and that upon the perfecting of an appeal to the United States Supreme Court such bond be put into force, and the matter of this litigation ordered to remain in statuo quo, until such time as it can be decided by the Appellate Court, or until such time as that court shall order to the contrary, and that the time of this stay be excluded from the time of performance of tax proceedings in case defendants are enabled to proceed; that unless such order shall be entered ther-in, the plaintiffs and those whom they represent, will suffer irremediable injuries in the premises.

H. V. MERCER.

Subscribed and sworn to before me this 16th day of February, 1915.

[NOTARIAL SEAL.] CLAUDE G. KRAUSE,
Notary Public, Hennepin County, Minn.

My commission expires Dec. 4, 1919.

(Endorsed:) Affidavit, Notice of Motion & Order to Show Cause. Filed February 17, 1915. Charles L. Spencer, Clerk, By Clara M. Owens, Deputy.

46 *Affidavit of Service.*

STATE OF MINNESOTA,
County of Hennepin, ss:

J. Eustace Guest being first duly sworn, deposes and says, that at the City of Minneapolis, in said County and State, on the 16th day of February, 1915, he served the attached notice and affidavit upon John M. Rees, the attorney for the defendant therein named personally by handing to and leaving with him true and correct copies thereof.

J. EUSTACE GUEST.

Subscribed and sworn to before me this 17th day of February, 1915.

[NOTARIAL SEAL.] CLAUDE G. KRAUSE,
Notary Public, Hennepin Co., Minn.

My Commission expires Dec. 4, 1919.

47 And thereafter, to-wit: on the 18th day of February, 1915, the plaintiff petitioned for the allowance of an appeal to the

Supreme Court of the United States of America, and in connection therewith the following papers were filed:

Petition for allowance of appeal with Supersedeas;

Assignment of Errors and Prayer for Reversal;

Whereupon an order was made allowing said appeal, and a Citation issued, which said papers are in the words and figures following, to-wit:

48 United States District Court, District of Minnesota, Fourth Division.

GEORGE D. ROGERS, FRANK E. CRANDALL, and ALFRED L. GOETZMAN, Each as Representing Himself and Others of a Similar Class, Plaintiffs,

vs.

THE COUNTY OF HENNEPIN, HENRY C. HANKE, *and* Its County Treasurer and Individually, and Al P. Erickson, as County Auditor and Individually, Defendants.

Petition for Allowance of Appeal with Supersedeas.

Now come the above named plaintiffs, George D. Rogers, F. E. Crandall and Alfred L. Goetzman, representing themselves individually and the other members of the Chamber of Commerce of Minneapolis in their respective classes, and as a whole as described in the complaint, and feeling themselves aggrieved by the final judgment and decree heretofore made and entered herein on or about the 18th day of February, 1914, wherein and whereby it was ordered, adjudged and decreed that the objection to the jurisdiction of this Court as a Federal Court herein be sustained, and the said cause dismissed for want of jurisdiction, with costs, and in and by which judgment and decree and the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of these plaintiffs and those whom they represent; they further represent and show to *to* this Honorable Court that, while the decision herein was made on the date above specified, yet within that term and on the 28th day of February, 1914, an appeal was taken from that decision to the Circuit Court of Appeals of the United States within and for the Eighth Circuit, upon the theory that said judgment and decree involved more than a jurisdictional question; that all proceedings herein were stayed by this Honorable Court pend-

49 ing that appeal; that said Circuit Court of Appeals recently held that the question of jurisdiction alone was involved in said cause and that the Supreme Court of the United States alone could determine that question upon appeal, and therefore remanded said cause to this Court; that the Mandate therein was returned and filed in this Court on the 16th day of February, 1915, whereupon a motion was promptly made and an order to show cause, obtained therewith, returnable on the 18th day of February 1915, to fix the supersedeas bond for the appeal now asked, etc.

Now therefore, they come by their solicitor and counsel and peti-

tion this Honorable Court to allow them, the said complainants representing themselves and the other members of the Chamber of Commerce of Minneapolis, as in their complaint stated, to prosecute an appeal on the said final judgment and decree to the Honorable Supreme Court of the United States of America, under and according to the laws of the United States of America in that behalf made and provided, for the reasons specified in the Assignment of Errors which is filed herewith, and pray that this appeal may be allowed; that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States of America; that this Court certify the question of jurisdiction alone to that Court for decision, and also that an order be made fixing the amount of security which the complainants shall give and furnish upon such appeal, and upon the giving of such security that all further proceedings in or regarding the subject matter of this litigation be superseded and stayed until the determination of said appeal by the said Supreme Court of the United States of America to the end that said final judgment and decree shall be reversed and set aside; that the jurisdiction of this court herein be decreed; that the complainants have opportunity to present their case in this Court on its merits for the relief to which they are entitled under their amended bill, and under such other and further proceedings as shall be just and equitable in the premises.

50

And your petitioners will ever pray.

Dated this 17th day of February, 1915.

H. V. MERCER, *Solicitor for Plaintiffs.*
MERCER, SWAN & STINCHFIELD,
Counsel for Plaintiffs.

51 United States District Court, District of Minnesota, Fourth Division.

No. 22. Equity.

GEORGE D. ROGERS, FRANK E. CRANDALL, and ALFRED L. GOETZMAN, Each as Representing Himself and Others of a Similar Class, Plaintiffs,

vs.

COUNTY OF HENNEPIN, HENRY C. HANKE, as Its County Treasurer and Individually, and Al. P. Erickson, as County Auditor and Individually, Defendants.

Assignment of Errors and Prayer for Reversal.

The plaintiffs in this action, in connection with their Petition for Appeal to the Supreme Court of the United States of America, both individually and in their representative capacities, by their solicitor and counsel make the following Assignment of Errors which they aver occurred upon the trial and proceedings of the above entitled action, to-wit:

1. That said court erred in holding that it had no jurisdiction of this cause.

2. That said court erred in holding that said cause should be dismissed for want of jurisdiction of said court.

3. That said court erred in sustaining the objection to its own jurisdiction herein.

4. That the said court erred in refusing to hold that property to the extent of more than $3,000, exclusive of interest and costs, was here twice assessed as to each of the 550 memberships in said association.

5. That the court erred in refusing to hold that the amount involved as to each individual member herein was more than the jurisdictional amount.

6. That the court erred in refusing to hold that the rights of the parties plaintiff herein should necessarily be determined as a joint matter in one action, and that the amount involved was more than the jurisdictional amount.

52 7. That the court erred in refusing to hold that the issue as to whether this was a joint claim as to memberships and the property connected therewith did, itself, involve more than the jurisdictional amount.

8. That the court erred in not retaining jurisdiction upon the complaint and other proceedings.

Wherefore, the plaintiffs pray that the judgment of said District Court of the District of Minnesota may be reversed with costs and such other and further directions, and order had, as shall be just and equitable in the premises.

Dated this 17th day of February, 1915.

H. V. MERCER, *Solicitor.*
MERCER, SWAN & STINCHFIELD,
Counsel for Plaintiffs.

500-510 Security Bank Bldg., Minneapolis, Minnesota.

53 United States District Court, District of Minnesota, Fourth Division.

GEORGE D. ROGERS, FRANK E. CRANDALL, and ALFRED L. GOETZMAN, Each as Representing Himself and Others of a Similar Class, Plaintiffs,

vs.

THE COUNTY OF HENNEPIN, HENRY C. HANKE, *and* Its County Treasurer and Individually, and Al P. Erickson, as County Auditor and Individually, Defendants.

Order Allowing Appeal, etc.

On motion of H. V. Mercer, Esq., solicitor and of Counsel for complainants, it is ordered that an appeal to the Supreme Court of the United States of America, from the final judgment and decree heretofore filed and entered herein, dismissing the case for want of

jurisdiction of the Federal Court as such alone, be, and the same hereby is allowed, and that a certified transcript of the bill of exceptions, record, testimony, exhibits, stipulation, and all proceedings herein be forthwith transmitted to said Supreme Court of the United States of America. It is further ordered that the bond on appeal be fixed at the sum of Five Hundred Dollars ($500.00), the same to act as a supersedeas bond, and also as a bond for costs and damages on appeal, and thereby stay all proceedings herein until the rights of the plaintiffs in the premises can be heard and determined; and that an undertaking in the same amount may be substituted for said bond when such undertaking is approved by a judge of this Court.

PAGE MORRIS,
District Judge.

Dated this 18th day of February, 1915.

54 *Citation.*

United States of America to County of Hennepin, Henry C. Hanke, as its County Treasurer and Individually, and Al P. Erickson, as County Auditor and Individually, and John M. Rees, and Frank J. Williams, as Attorneys for Defendant in Error:

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States of America, in the City of Washington, District of Columbia, within thirty (30) days after the date hereof, pursuant to appeal filed in the office of the Clerk of the United States District Court, District of Minnesota, Fourth Division, wherein George D. Rogers, Frank E. Crandall and Alfred L. Goetzman, representing themselves and others similarly situated, are appellants, and the County of Hennepin, Henry C. Hanke, as its County Treasurer and individually, and Al P. Erickson, as County Auditor and individually, are appellees, to show cause, if any there be, why judgment rendered against the appellants as in said appeal mentioned, solely upon the ground of want of jurisdiction as a Federal Court, should not be corrected and speedy justice should not be done in that behalf.

Witness, the Honorable Page Morris, United States District Judge, this 18th day of February, 1915.

PAGE MORRIS,
District Judge.

55 Personal service of the foregoing and receipt of copy hereby admitted at Minneapolis, Minnesota, this 18th day of February, 1915.

JOHN M. REES,
County Attorney;
Per FRANK J. WILLIAMS,
Assistant County Attorney of Hennepin County,
And Attorneys for Appellees.

Filed Feb'y 18, 1915. Charles L. Spencer, Clerk, by Thomas H. Howard, Deputy.

56 And thereafter, to-wit: on the 26th day of February, 1915, the following Undertaking for Supersedeas on Appeal and order approving same, nunc pro tunc, was filed of record in said cause, which said undertaking and order are in the words and figures following, to-wit:

57 *Undertaking for Supersedeas on Appeal from the Final Judgment and Decree in the District Court of the United States for the District of Minnesota, Fourth Division, to the Supreme Court of the United States of America.*

GEORGE D. ROGERS, FRANK E. CRANDALL, and ALFRED L. GOETZMAN, Each as Representing Himself and Others of a Similar Class, Plaintiffs,

vs.

THE COUNTY OF HENNEPIN, HENRY C. HANKE, as its County Treasurer and Individually, and Al P. Erickson, as County Auditor and Individually, Defendants.

Whereas, On the 18th day of February, 1914, in the District Court of the United States for the District of Minnesota, Fourth Division, a final judgment and decree was entered in this cause against the plaintiffs and in favor of the defendants, sustaining an objection to the jurisdiction, and a motion to dismiss the bill for want of jurisdiction, and entering a judgment for dismissal, and an appeal taken thereupon to the United States Circuit Court of Appeals for the Eighth Circuit with a Stay upon said judgment on February 28th, 1914, and the Mandate on said appeal returned to the trial court on February 17th, 1915, and,

Whereas, The said action was brought by the plaintiffs, representing themselves and others, to restrain defendants from enforcing taxes assessed against the plaintiffs as members of the Chamber of Commerce of Minneapolis, upon their memberships in, and the assets of, that corporation, and,

Whereas, A stay in connection with said matter is desired pending the removal of said cause from said court to the said Supreme Court of the United States of America, and until a final decision can be made by the last named court, and,

Whereas, Said plaintiffs, representing themselves, and others have obtained an appeal and filed a copy thereof in the clerk's office of the said court to revise the decree in the aforesaid suit, and

58 a citation directed and issued to said defendants admonishing them to be and appear at a session of the Supreme Court of the United States of America, to be holden in the City of Washington, District of Columbia, within thirty days from and after the date of said citation, and allowing this supersedeas in lieu of a bond,

Now therefore, the undersigned, the United States Fidelity & Guaranty Company does hereby undertake that the condition of this obligation is such that if the said plaintiffs and those whom they represent, shall prosecute said appeal to effect and answer all damages and costs if they fail to make such plea good, then the

above obligation to be void, otherwise to remain in full force and effect, but the total obligation hereunder shall not exceed the sum of five hundred dollars ($500.00).

Dated this 26th day of February, 1915.

UNITED STATES FIDELITY AND GUARANTY COMPANY,
By WIRT WILSON AND GEORGE E. MURPHY,
Its Attorneys-in-Fact.

Signed, Sealed and Delivered in Presence of:
MAXWELL SUSSMAN.
L. O'DONNELL.

59 STATE OF MINNESOTA,
County of Hennepin, ss:

On this 26th day of February, 1915, before me a Notary Public within and for said County and State, personally appeared Wirt Wilson and George E. Murphy, to me personally known, who being by me duly sworn upon oath did say that they are the Agents and Attorneys-in-fact of and for the United States Fidelity and Guaranty Company, a corporation of Baltimore, Maryland, created, organized and existing under and by virtue of the laws of the State of Maryland; that the corporate seal affixed to the foregoing within instrument is the seal of said company; that the said seal was affixed and the said instrument was executed by authority of its Board of Directors; and the said Wirt Wilson and George E. Murphy did acknowledge that they executed the said instrument as the free act and deed of said company.

[SEAL.] MAXWELL SUSSMAN,
Notary Public, Hennepin County, Minnesota.

My commission expires Nov. 18, 1920.

The foregoing and within undertaking is hereby approved nunc pro tunc as of February 18th, 1915, in lieu of a supersedeas bond, and all proceedings under the judgment herein are hereby stayed.

Dated this 26th day of Feb. 1915.

WILBUR F. BOOTH,
District Judge.

(Endorsed:) Undertaking for Supersedeas on Appeal from the Final Judgment and Decree in the District Court of the United States for the District of Minnesota, Fourth Division, to the Supreme Court of the United States of America. Filed Feby. 26, 1915. Charles L. Spencer, Clerk, by Thomas H. Howard, Deputy.

60 And thereafter, to-wit: on the 8th day of March, 1915, the following præcipe and stipulation as to the transcript on appeal was filed of record in said cause, which said præcipe and stipulation is in the words and figures following, to-wit:

61 In the District Court of the United States for the District of Minnesota, Fourth Division.

GEORGE D. ROGERS, FRANK E. CRANDALL, and ALFRED L. GOETZMAN, Each as Representing Himself and Others of a Similar Class, Plaintiffs,

vs.

THE COUNTY OF HENNEPIN, HENRY C. HANKE, as Its County Treasurer and Individually, and Al P. Erickson, as County Auditor and Individually, Defendants.

Præcipe Indicating Portions of Record for Transcript on Appeal.

To the Clerk of the District Court of the United States for the District of Minnesota and the above-named Defendants and their Counsel:

You and each of you will please take notice that the plaintiffs hereby designate and indicate the portions of the record to be incorporated into the transcript of the record on the appeal to the Supreme Court of the United States of America herein from the District Court of the United States for the District of Minnesota, the following things and all thereof:

(1) The Bill in Equity as finally amended herein.

(2) Notice of Motion for Temporary Injunction.

(3) Order to show cause why the Motion for Temporary Injunction should not be granted.

(4) Defendants' objection to jurisdiction and motion to dismiss the complaint, etc.

(5) The record should also contain at this point this statement: "That short affidavits were filed by both parties upon the motion for temporary injunction, but leaving the main portions of the complaint uncontroverted."

(6) The opinion of the District Court upon the hearing herein.

(7) Order for judgment of the District Court herein.

(8) Final Judgment and Decree herein.

62 (9) The record should also contain this statement: "An exception was allowed to the plaintiff by the Court upon its ruling to dismiss the cause and deny all relief".

(10) The record should also contain this statement: "A certificate in due form as to the transcript, pleadings, and exhibits, was made and allowed by the trial court, February 28, 1914."

(11) The record should contain this statement: "Under date of February 27, 1914, there was filed in the trial court herein, a petition for allowance of an appeal with Supersedeas in regular form and an Assignment of Errors and Prayer for Reversal, containing twenty-five alleged errors, some of which are made upon jurisdictional points and some upon the merits, and on the 28th day of February, 1914, the Court entered its order in regular form allowing that appeal to the United States Circuit Court of Appeals for the Eighth Circuit, with an Undertaking which, by written stipulation

of counsel, operated as a supersedeas bond upon that appeal; the Court then issued a Citation under date of February 28, 1914, which was served upon that date and the usual transcript of record was sent to the Circuit Court of Appeals; the cause was put on for argument at Denver, Colorado, at a term of the said Circuit Court of Appeals and argued on September 15, 1914, at which time, a motion was made to dismiss that appeal upon the theory that the question of jurisdiction alone had been determined by the trial court and the said Circuit Court of Appeals subsequently filed its order holding in effect that the lower court only decided the question of jurisdiction and that therefore, the appeal lay alone to the Supreme Court of the United States. Upon the filing of that opinion and in order to hasten the Mandate, counsel entered a stipulation to allow it to be returned without the usual sixty day delay, and the Mandate reached the trial court on the 17th day of February, 1915; thereupon an order to show cause with a Notice of Motion as follows, was entered in the trial court:

(Here attach Notice of Motion and Order to show cause for a stay, etc., returnable at Duluth and the record of the hearing and the order made by the Court thereon).

(12) The petition for the appeal to the Supreme Court of the United States.

(13) Assignment of Errors filed with that petition.

(14) Order allowing Supersedeas Undertaking to act as a bond thereon.

(15) Supersedeas Undertaking.

(16) Citation and Acknowledgment of Service.

(17) This Præcipe and the Acknowledgment of Service thereon.

(18) The usual records of the Clerk, with his return in due form.

63

H. V. MERCER, *Solicitor for Plaintiffs.*
MERCER, SWAN & STINCHFIELD,
Counsel for Plaintiffs.

Dated this 4th day of March, 1915.

Service of the foregoing Præcipe is hereby admitted this 4th day of March, 1915.

JOHN M. REES,
Counsel for Defendants.

It is hereby stipulated and agreed by and between Plaintiffs and Defendants through their respective counsel that portions of the record as specified in the foregoing Præcipe shall constitute the transcript of record on Appeal, and that the Clerk of the United States Court for the District of Minnesota, shall transmit only the papers designated in this stipulation with the descriptive insertions of other documents as therein contained together with this stipulation.

H. V. MERCER,
MERCER, SWAN & STINCHFIELD,
Counsel for Plaintiffs.
JOHN M. REES, *Counsel for Defendants.*

Dated this 4th day of March, 1915.

(Endorsed:) Præcipe indicating portions of record for transcript on appeal. Filed March 8, 1915. Charles L. Spencer, Clerk, by Thomas H. Howard, Deputy.

64 And thereafter, to-wit: on the 16th day of March, 1915, the following notice of substitution of defendants' attorneys was filed of record in said cause, which said notice is in the words and figures following, to-wit:

65 United States District Court, District of Minnesota, Fourth Division.

Equity. No. 22.

GEORGE D. ROGERS, FRANK E. *DRANDALL*, and ALFRED L. GOETZman, Each as Representing Himself and Others of a Similar Class, Plaintiffs,

vs.

THE COUNTY OF HENNEPIN, HENRY C. HANKE, as Its County Treasurer and Individually, and Al P. Erickson, as County Auditor and Individually, Defendants.

To the above-named plaintiffs and to H. V. Mercer, their counsel:

Please take notice, that the undersigned, John M. Rees, is now and since the 1st day of January, 1915, has been the duly elected, acting, and qualified county attorney of Hennepin County, and as such is ex officio substituted as counsel for the defendants herein in the place and stead of James Robertson, and that the said James Robertson has in writing consented to the said substitution.

Dated March 8, 1915.

JOHN M. REES.

(Same Title and Cause.)

Consent and notice is hereby given of the substitution of John M. Rees as attorney for defendants in the place and stead of the undersigned.

JAMES ROBERTSON.

(Same Title and Cause.)

Due notice and service of the above notice of substitution is hereby admitted the 8th day of March, 1915.

H. V. MERCER,
Counsel for Plaintiffs.

(Endorsed:) Notice of Substitution Defendants' Attorneys. Filed March 16, 1915. Charles L. Spencer, Clerk, by Thomas H. Howard, Deputy.

66 UNITED STATES OF AMERICA:

District Court of the United States, District of Minnesota, Fourth Division.

I, Charles L. Spencer, Clerk of said District Court, do hereby certify to the Honorable, the Supreme Court of the United States, that the foregoing, consisting of 66 pages, numbered consecutively from 1 to 66, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final judgment and decree, and all other proceedings in said cause, and of the whole thereof, as appears from the original records and files of said court, except as to those portions of the record which have been expressly waived by the stipulation of counsel, which said stipulation is included in and made a part of this transcript; and I do further certify that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

In witness whereof, I have hereunto set my hand, and affixed the seal of said court, at Minneapolis, in the District of Minnesota, this 16th day of March, A. D. 1915.

[Seal U. S. Dist. Court, Dist. of Minnesota, Fourth Division.]

CHARLES L. SPENCER, *Clerk*,
By THOMAS H. HOWARD, *Deputy*.

67 In the Supreme Court of the United States.

GEORGE D. ROGERS, FRANK E. CRANDALL, and ALFRED L. GOETZMAN, Each as Representing Himself and Others of a Similar Class, Appellants,

vs.

THE COUNTY OF HENNEPIN, HENRY C. HANKE, as Its County Treasurer and Individually, and Al P. Erickson, as County Auditor and Individually, Appellees.

Statement of Errors on Which Appellants Rely, with Designation of Parts of Record to be Printed.

To the Clerk of the Supreme Court of the United States:

I.

The Appellants for their statement as to the errors on which they intend to rely herein, specify that they rely upon all errors assigned by them for their writ of error in the District Court of the United States for the District of Minnesota in this cause, Nos. 1 to 8 inclusive, all of which have been returned and incorporated in the transcript of the record on appeal from said District Court of the United States for the District of Minnesota to this Court herein, as fully and completely as if the same were set forth verbatim herein.

II.

The Appellants hereby designate all of the record which has been returned herein by the Clerk of the District Court of the United States for the District of Minnesota as being necessary for the consideration of said errors, except only such titles, filing marks
68 and formal parts as are usually abbreviated.

Dated May 18th, 1915.

Very truly yours,

H. V. MERCER,
Counsel for Appellants.

The Appellees hereby consent that the record in the above entitled cause may be printed as specified in the foregoing statement.

JOHN M. REES,
County Attorney.

69 [Endorsed:] File No. 24,641. 897. Geo. D. Rogers —, Appellants, v. The County of Hennepin et al. Statement of errors relied on and designation by Appellants of parts of record to be printed. Clerk's Office, Supreme Court U. S. Filed May 24th, 1915.

Endorsed on cover: File No. 24,641. Minnesota D. C. U. S. Term No. 411. George D. Rogers, Frank E. Crandall et al., appellants, vs. County of Hennepin, Henry C. Hanke, as its County Treasurer and individually, and Al P. Erickson, as County Auditor and individually. Filed April 1st, 1915. File No. 24,641.

Supreme Court of the United States

OCTOBER TERM, 1915.

NO. 411

GEORGE D. ROGERS, FRANK E. CRANDALL, and ALFRED L. GOETZMAN, each as representing himself and others of a similar class,

Appellants,

—vs—

THE COUNTY OF HENNEPIN, HENRY C. HANKE, as its County Treasurer and individually, and AL. P. ERICKSON, as County Auditor and individually,

Appellees.

Appellants' Brief

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

STATEMENT OF THE CASE.

NATURE OF ACTION.

This is an action in equity, intended to prevent what the plaintiffs claim to be a second and arbitrarily discriminatory taxation of the assets of the Chamber of Commerce of Minneapolis, and also of its good will or the privileges of membership in that organization, by a joint taxation, which is in fact accomplished by levying in form individual assessments upon the membership of each member, but in reality to reach the corporate assets.

ALL MEMBERS ARE PLAINTIFFS.

There are five hundred and fifty (550) members of this

association, (Tr. p. 5, fol. 8), all in the same class, except that they are divided in this action into three groups, based solely on residence, for which respective groups the three named plaintiffs appear, (Tr. p. 1, fol. 2).

George D. Rogers appears for the class of members who reside in Minneapolis, Hennepin County, Minnesota, where the taxation was made, of which there are four hundred forty-two (442), (Tr. p. 3, fol. 4).

Frank E. Crandall appears for the class of members who are residents and citizens of other localities within the State of Minnesota, outside of the city of Minneapolis, and County of Hennepin. Of these there are fifty-eight (58), (Tr. p. 3, fol. 4) in number.

Alfred L. Goetzman appears for the class of members who are residents and citizens of other states than Minnesota, of which there are fifty (50) in number, (Tr. p. 3, fol. 4).

The residences are the domiciles and the certificates of membership are held where the members reside, (Tr. p. 2, fol. 2). This is the reason for the classification.

FEDERAL JURISDICTION THE ISSUE.

In this particular case, No. 411, jurisdiction of the Federal Court, as such, is the only issue, here, (Tr. pp. 27, 34, 35, fols. 38, 52, 54).

The learned trial court acquired the view that the contentions which we make were too liberal and broad, but it seems to us that its decision was too strict and narrow, and based upon only one of the many elements of jurisdictional amount. The District Court was of the opinion that individual monetary charges for taxes separately assessed was all that was involved, and they incapable of aggregation in amount; but our contention is that the question of aggregation of a single year's individual taxes was not the test of jurisdiction, or the only or even the fundamental, jurisdictional question.

THE WAY THE ISSUE AROSE.

The decision was made upon the objection to the jurisdiction of the Federal Court, as such, upon the theory that the

amount in controversy was insufficient, (Tr. p. 21, fol. 27); this was the theory of the District Court in dismissing the bill, (Tr. pp. 26-27, fols. 36, 38).

As we understand it, the objections to the jurisdiction take the place of a demurrer under Equity Rule No. 29, and therefore, facts well pleaded in the bill must be considered as if true, as they would be so considered upon demurrer.

FEDERAL QUESTIONS.

The complaint alleges facts to show:

1. That the taxation was without any law, statutory or otherwise, (Tr. p. 6, fol. 9), and without that due process of law required by the Fourteenth Amendment to the Federal Constitution, (Tr. p. 6, fol. 9).

2. Facts to show that the full assets of the Chamber of Commerce had been once fully taxed for the year in question, 1913, (Tr. p. 4, fol. 7); that this was a second taxation of their joint assets, (Tr. p. 7, fol. 11); that there were other memberships in other voluntary associations standing in the same position as these, some of which were of much greater value, and none of which were taxed in Minnesota, (Tr. p. 6, fol. 9); that none of the assets of any other association or corporation within the state were doubly taxed, (Tr. p. 6, fol. 9); that this was a deliberate and arbitrary discriminatory taxation, in violation of the equality clause of the Fourteenth Amendment of the Federal Constitution, (Tr. p. 6, fol. 9).

For Federal jurisdiction therefore, there remained but the question of whether the amount in controversy was sufficient, and this was the only question raised below, and we assume the only one that will be urged here. (See Barry v. Edmunds, 166 U. S. 550.)

AMOUNT IN CONTROVERSY.

The complaint alleges in substance that for thirty years and during the whole life of the Chamber, Chapter 138 of the general Laws of 1883, (Tr. p. 5, fol. 8), under which the Chamber was organized, (Tr. p. 5, fol. 8), such associations had paid their taxes upon their assets in the regular way, in Minnesota;

that until 1912 corporations of this class, under the constant construction of the law, had been held not assessable as to their memberships, but that it was discovered that the local authorities had assessed the assets of this corporation $171,500 too high for the previous year, (Tr. p. 5, fol. 8); that the State had passed certain legislation for taxing farmers and terminal elevators in the state on a different basis from the former method; that one of the taxing officers then threatened to "get even" by taxing the memberships and requiring them to either pay for said matters or spend some money fighting, (Tr. p. 5, fol. 8); that the taxes were placed upon the memberships at $3,500.00 each and assessed for 1912 under "Money and Credits" as if the corporation had not been taxed, and as if they had been property in the general sense, that come within the class of "Money and Credits," and when it was heard that the members were in fact resisting that assessment, another threat was made that they would be assessed at $1,100.00 per membership, and that the members might pay or fight; that they were assessed at $1,100.00 for 1913, as personal property, without any warrant of statutory or other law, and individual claims were thus attempted to be created at $38.77, irrespective of residence, and irrespective of the assessment against all of the assets of said corporation, (Tr. p. 6, fol. 9); that before the assessment of 1913 an attempt was made by the state to get its legislative department to pass a law that would tax such memberships but the legislature declined to pass it; that the memberships in the Associated Press, lodges, fraternal orders and other business associations having similar memberships, and of the same class generally, were not taxed in said city, although standing in a similar position, and some of them selling contingently for a much higher price, (Tr. p. 6, fol. 9).

These memberships have a conditional sale value of $3,000 each exclusive of interest and costs or of $1,650,000, (Tr. p. 7, fol. 10), $302,500 of which conditional value is based upon good will or intangible privileges, (Tr. p. 5, fol. 7).

The total tax for the single year as booked against all the

plaintiffs is $21,788.50 or $38.77 each, (Tr. p. 6, fol. 9). Of this tax, $5,000, for this year would be a retaxation of the corporate real estate, (Tr. p. 7, fol. 10), and this tax is threatened indefinitely, (Tr. p. 7, fol. 10).

The Chamber was annually taxed excessively on its real estate for five or six years back, without the knowledge of the plaintiffs, and the defendants threaten to re-levy that tax against the memberships for those same years, (Tr. p. 8, fol. 12). It is alleged also that the question of joinder involves the jurisdictional amount. (Tr. p. 8, fol. 12.)

The plaintiffs appeared before the Board of Equalization and the Minnesota Tax Commission, acting as the State Board of Equalization, jointly, on this matter, and it was jointly determined, (Tr. p. 7, fol. 11); the defendants treated the matter in the assessment, and before the Board of Equalization, and the Tax Commission, as one subject, and threatened to take the property, which is worth several hundred thousand dollars, and the memberships, each of which memberships is conditionally worth in excess of $3,000.00, (exclusive of interests and costs), when treated with its equitable interests in the said corporate property, and unless restrained by the court the taxation will indefinitely continue against the property and the memberships, and annually subject the plaintiffs and all those whom they represent, to the prosecution or defense of multitudinous suits to protect their interests in the premises (Tr. p. 7, fols. 10-12).

The Chamber of Commerce of Minneapolis is a corporation in the nature of a voluntary association, (Tr. p. 2, fol. 4); it has no capital stock and transacts no business for profit, (Tr. p. 3, fol. 5), but its object is to operate a grain exchange, wherein a grain traders' market is held. (Tr. p. 3, fol. 5); it owns buildings for its exchange room and offices, which offices it rents out to its members, (Tr. p. 3, fol. 5); it controls the affairs of its members in their relations with each other in that traders' market, so that the right of acquisition, use and disposition of memberships in it are controlled by the contractual relations of the members and the corporation through the charter

and general rules, or by-laws, and so that each member has a lien upon the membership of every other member for any transactions between them arising under and by virtue of the rules—for transactions on the exchange, (Tr. pp. 3-4, fols. 5-7).

It is alleged in the complaint that the Chamber is "similar in principle, organization, conduct, membership control, and relations among its members, to the relations of memberships and control in social clubs, fraternal societies, the Associated Press and voluntary business associations generally, in the state of Minnesota, and that the rights of admission, use and disposal of such memberships,, is equally limited in it." (Tr. p. 2, fol. 4.)

It is also alleged in the complaint that the members only own the property of the Chamber in equity, as members of other voluntary associations own the property in equity, (Tr. p. 4, fol. 6).

FIRST TO COURT OF APPEALS.

The District Court dismissed the bill and motion for a restraining order or temporary injunction for want of jurisdiction of the Federal Court, as such, (Tr. p. 27, fol. 38); it raised the question of adequate legal remedy, and so expressed itself thereon, in its order, (Tr. p. 26, fol. 26), as to lead us to believe that it had decided more than the jurisdictional question. If the decision had that effect, the U. S. C. C. A. was the proper appellate tribunal.

Blythe v. Hinckley, 173 U. S. 501 L. Ed. 783.
Scully v. Bird, 209 U. S. 479 (L. Ed. 899).

Because of that situation we dared not come to this Court first and went to the Circuit Court of Appeals.

That court held that the District Court had only decided the question of jurisdiction, and that *this Court* was the proper appellate Tribunal, (Rogers v. Hennepin Co., 220 Fed. Rep. 453), (8 C. C. A. This left a situation where the dismissal for want of jurisdiction alone was shown by the decree, and allowed the direct appeal to this Court within two years, according to the established practice on such a decree.

Excelsior Wood Pipe Co. v. Pacific Bridge Co., 183 U. S. 282 (L. Ed. 910).

Herndons Carter Co. v. James N. Norris Sons & Co., 224 U. S. 494 (L. Ed. 857).

The last case supra says:

> "The record shows that an appeal was taken to the circuit court of appeals from the decree of dismissal entered at the March term, 1911, of the circuit court. It was there dismissed, and at the October term, 1911, another appeal was allowed from the circuit court directly to this court. This court has held that the jurisdictional certificate must be issued during the term at which the question is decided. Colvin v. Jacksonville, 158 U. S. 456, 39 L. Ed. 1053, 15 Sup. Ct. Rep. 866; the Bayonne, 159 U. S. 687, 40 L. Ed. 306, 16 Sup. Ct. Rep. 185. It has also been held that the certificate being supplied by a decree in due form, showing dismissal for want of jurisdiction only, the appeal may be perfected subsequently, within two years, as are other appeals. Excelsior Wooden Pipe Co. v. Pacific Bridge Co., supra.

The opinion in this case (Rogers v. Hennepin Co., 220 Fed. 453) says:

> "In his opinion Judge Morris said:
>
> 'I think this bill ought to be dismissed for lack of jurisdiction, because I do not think that you can sum together these assessments against the individual members, and thus get the required jurisdictional amount.'

In the decree appears the following order:

> 'It is further ordered that the motion to dismiss be and the same is hereby in all things granted, upon the ground that the amount in controversy as to each of said plaintiffs is the sum of $38.77, and no more, and that said plaintiffs and those whom they claim to represent cannot aggregate their claims for the purpose of conferring jurisdiction on this court. It is further ordered that the above entitled action be and the same is in all things dismissed.'

"Authority to dismiss the cause was derived from sec. 37 of the Judicial Code (Comp. St. 1913, sec. 1019). From such an order of dismissal appeal lies under section 238 of said Code to the Supreme Court, and not to the Court of Appeals."

THE AMOUNT IN CONTROVERSY RAISED FROM DIFFERENT ANGLES.

It therefore seems to us that the question of jurisdictional amount should be argued as one question, but from the following angles:

a. That there was not that degree of legal certainty on this record to warrant holding that jurisdictional amount did not exist.

b. That the general allegation as to amount in controversy, when taken with the other facts showing the questions to be decided, was sufficient to warrant jurisdiction.

c. That plaintiffs are not bound to sit idle year after year because the damage done separately each year is not an amount which would warrant a court of law to give instant damages sufficient in each segregated case to come within the rule of federal jurisdiction.

d. That regardless of whether one or many of the members were plaintiffs, the controversy is of such a character that the decision would dispose of the whole question as to all, and all should be permitted to join.

e. That the controlling object of the suit is common to all members; the question is indivisible, whether treated from the standpoint of the joint assets of the Chamber or the segregated interests of the members in those joint assets, and the jurisdictional amount is sufficient from any angle.

f. That the members of this sort of an association have interwoven and common interests in the association and other memberships, unknown to, and closer than, those or stockholders in an ordinary corporation, and are each indispensable parties to a controversy that must decide forever what those relationships are and whether or not they shall be protected or treated as joint or separate interests.

g. That it is good practice to sue in the name of three members to represent all of them.

h. That this is the sort of a case where one of the principal issues is over the question of whether the interests of the individual members in the common assets are joint or separate; it is alleged that they are joint, and that this question alone involves more than the jurisdictional amount.

SPECIFICATION OF ERRORS.

The appellants hereby specify the errors upon which they rely, as follows (Tr. p. 33, fol. 51).

1. That said court erred in holding that it had no jurisdiction of this cause.

2. That said court erred in holding that said cause should be dismissed for want of jurisdiction of said court.

3. That said court erred in sustaining the objection to its own jurisdiction herein.

4. That the said court erred in refusing to hold that property to the extent of more than $3,000, exclusive of interest and costs, was here twice assessed as to each of the 550 memberships in said association.

5. That the court erred in refusing to hold that the amount involved as to each individual member herein was more than the jurisdictional amount.

6. That the court erred in refusing to hold that the rights of the parties plaintiff herein should necessarily be determined as a joint matter in one action, and that the amount involved was more than the jurisdictional amount.

7. That the court erred in refusing to hold that the issue as to whether this was a joint claim as to memberships and the property connected therewith did, itself, involve more than the jurisdictional amount.

8. That the court erred in not retaining jurisdiction upon the complaint and other proceedings.

ARGUMENT.

I.

ERRORS I.—VIII.

(Tr. p. 33, fol. 51.)

THE DISTRICT COURT IMPROPERLY DECIDED THE AMOUNT IN CONTROVERSY.

In reality each error is involved in the single question of amount and will be so considered, from the different angles.

Undoubtedly the District Court was led to its conclusion

that there was no sufficient amount for Federal jurisdiction, and to a consequential dismissal of this cause upon the theory that the tax of $38.77 which each member would have to pay was a separate obligation, disconnected with all other questions; was not capable of aggregation for all the members, and consequently controlling as to insufficiency of amount. (Tr. pp. 24-27.)

If this were a case involving nothing more than a claim that each of 550 persons had each been separately taxed $38.77 upon property, the ownership of which was disconnected, so that no question of joint ownership or double taxation of a property jointly owned, or the interlocking and restrictive contractual and conditional rights in the property were not present and could not in good faith be claimed to be present, then we should not be here questioning that decision, nor would we have been in a Federal Court with this case.

But as we view this case, the test applied by the court is incorrect because the determination of this cause, whether for one or many, is, in both law and equity, an essential determination of rights much more valuable than the amount required.

Undoubtedly the rule is that when an assessment is simply dependent upon common rules of law and not upon common interests in the property assessed, the aggregation of amounts is not permissible; but where the assessment is dependent upon common rules of law, upon joint action, upon common interests and a common decision, then the whole matter is one in fact and must be so treated.

The common and interwoven relationship of the members, and the common assessment and equalization out of which the issue actually grows, necessarily involve: first, the determination of what those relations are; second, the question of whether that joint interest is property which can be again assessed, in fact jointly, but in the form of an assessment to each member.

From this standpoint we see that each membership is conditionally worth to exceed $3,000, exclusive of interest and

costs, (Tr. p. 7, fol. 10); that the determination as to each membership, necessarily involves:

1. The right to assess the corporate assets once to the association and a second time to the members, (the corporate assets being several hundred thousand dollars, (Tr. p. 7, fol. 10).

2. Whether the joint relations of the whole membership create an intangible value of $302,500 that can be divided by 550 and equal one-half of the assessment made upon each membership, as was done (Tr. pp. 5-6, fols. 7-11), to accomplish a further corporate assessment.

3. Whether the other half of the value assessed can be so assessed upon account of its being an arbitrarily double taxation, (Tr. p. 7, fol. 10).

4. Whether the corporation was excessively assessed to the extent of $5,500 per year for several years to attempt to reach the memberships, and whether the members can now be reassessed for that same thing, for five or six years, (Tr. p. 8, fol. 12), creating a liability of $25,000 to $30,000.

5. Whether they can all be assessed with this arbitrary discrimination, year after year, on this scheme (Tr. p. 7, fol. 10).

6. Whether a single member can be taxed as a part of that scheme, year after year, and required to wrongfully pay, or as a result lose his membership, or if others do not pay lose his right of lien, even though the taxes on all the taxable assets are paid? Must he suffer this annoyance and intereference with his membership indefinitely, even though it be conditionally worth more than the jurisdictional amount.

7. Can the defendants resist the joinder of all these claims without resisting more than the jurisdictional amount? Certainly a court from evidence to support this bill would find in favor of the plaintiffs on these things.

The defendants take the stand that they can place them in this position, and that the Federal Court cannot protect them,

simply because it takes the value in annual chunks individually rather than as a single operation.

There is no doubt but there are two distinct classes of cases recognized, not always easily distinguishable.

With respect to them, Mr. Chief Justice Waite said in Ex. Parte, Baltimore & Ohio Ry Co., 106 U. S. 5 (L. Ed. 78):

> "The distinction between the two classes of cases was clearly stated by Ch. J. Taney in Shields v. Thomas, and that case was held to be within the latter class. It may not always be easy to determine the class to which a particular case belongs, but the rule recognizing the existence of the two classes has long been established."

In Troy Bank v. Whitehead & Co., 222 U. S. 37 (L. Ed. 81), it is said:

> "When two or more plaintiffs, having separate and distinct demands, unite for convenience and economy in a single suit, it is essential that the demand of each be of the requisite jurisdictional amount; but when several plaintiffs unite to enforce a single title or right, in which they have a common and undivided interest, it is enough if their interests collectively equal the jurisdictional amount."

And again:

> "The present suit is of the latter class. Its controlling object—that which makes it cognizable in equity—is the enforcement of the vendor's lien, which is a single thing or entity in which the plaintiffs have a common and undivided interest, and which neither can enforce in the absence of the other. Thus, while their claims under the notes were separate and distinct, their claim under the vendor's lien was single and undivided and the lien sought to be enforced as a common security for the payment of both notes."

It has all along seemed to us that the inter-relations and inter-liens upon each membership, the inter-equitable ownership, and the threat of retaxation to cover the joint property; the value of the rights to be protected as against a joint assessment and joint equalization to cover a property jointly owned in equity, against an arbitrary and discriminative taxation; and the claim that all of these are joint matters, removed any question of doubt as to the common interests needing protection. We cannot read such authorities as the following:

The case of Washington Market Co. v. Hoffman, 101 U. S. 112,
where the members were not all in the original case and all were brought in and their interests aggregated, and the cases of
Davies v. Corbin, 112 U. S. 36.
McDaniel v. Traylor, 196, U. S. 415, and
Troy Bank v. Whitehead & Co., 222 U. S. 39, and
Smithers v. Smith, 204 U. S. 633,

without believing the principles settled, without reviewing the whole field of precedents for practical illustrations.

Certainly the assessment and equalization of taxes as one matter against the members was a joint act as applied to this institution. (Tr. p. 7, fol. 11.)

Undoubtedly such assessment and such equalization is a quasi-judicial act, and if without authority, a joint wrong as to all. As said in

Central of Georgia Ry. Co. v. Wright, 207 U. S. 134:
"Former adjudications in this court have settled the law to be that the assessment of a tax is action judicial in its nature, requiring for the legal exertion of the power such opportunity to appear and be heard as the circumstances of the case require. Davidson v. New Orleans, 96 U. S. 97, 24 L. Ed. 616; Weyerhaueser v. Minnesota, 176 U. S. 550, 44 L. Ed. 583, 20 Sup. Ct. Rep. 485; Hagar v. Reclamation Dist. No. 108, 111 U. S. 701."

This joint action against which the complaint is made for all would alone entitle aggregation, and the rights to be protected would be the test, collectively, and the court was not entitled to make an advance trial of the merits to settle its conclusion as to jurisdiction.

But as the question of aggregation, as well as the joint equitable interests, is important to the members and the real right to be protected against the assessment, if wrong, is important and possibly doubtful we shall point out some of the precedents that seem to throw light upon the questions, lest our views be otherwise considered wrong.

a. DISMISSAL SHOULD NOT BE MADE FOR WANT OF JURISDICTION EXCEPT IN CASE OF LEGAL CERTAINTY.

The objection to the jurisdiction challenged the issues as would be a demurrer. Ralston Steel Car Co. v. National

Dump Car Co., 222 Fed. 590; Boyd v. N. Y. & H. R. Co. et al, 220 Fed. 174.

Good faith is required on the part of the plaintiff; but certianty that jurisdiction does not exist on the record is an essential prerequisite to dismissal.

In Schunk v. Moline, etc., Co., 147 U. S. 500, it is said:

> "The right to recover anything was challenged by the demurrer."
>
> Schunk v. Moline, Etc., Co., 147 U. S. 500 (L. Ed. 225).

Now, it must appear to a legal certainty that jurisdiction of the cause on the claim in the bill cannot exist. There is a legal discretion allowed.

> Barry v. Edmunds, 116 U. S. 550 (L. Ed. 729).
> Put-in-Bay Co. v. Ryan, 181 U. S. 407 (L. Ed. 927).

In Put-in-Bay Waterworks, etc. v. Ryan, 181 U. S., 407-434 (L. Ed. 927), it is said (p. 431):

> "And it has been several times decided by this court that a * * * suit cannot properly be dismissed by a circuit court as not involving a controversy of an amount sufficient to come within its jurisdiction, unless the facts, when made to appear on the record, create a legal certainty of that conclusion. Barry v. Edmunds, 116 U. S. 550, 29 L. Ed. 729, 6 Sup. Ct. Rep. 501; Wetmore v. Rymer, 169 U. S. 115, 42 L. Ed. 682, 18 Sup. Ct. Rep. 293."

In Board of Comrs. vs. Vandriss, 115 Fed. 866 (8 C. C. A.), it is said, at page 782:

> "Respecting the other question, it is only necessary to say that the sum originally sued for exceeded $2,000, exclusive of interest and costs; and the fact that a recovery was not allowed on some of the coupons, because the statute of limitations was successfully pleaded as a defense thereto, does not defeat a jurisdiction which was once lawfully acquired. In cases of this kind it is the sum actually claimed in good faith by the plaintiff when he files his declaration or complaint which determines the jurisdiction of the court, and the fact that the plaintiff may not succeed in recovering all that he asks will not affect the jurisdiction of the court. Schunk v. Moline, Milbourn & Stoddard Co., 147 U. S. 500, 504, 13 Sup. Ct. 416, 37 L. Ed. 255; Washington Co. v. Williams, 49 C. C. A. 621, 111 Fed. 801, 811."

As said by Mr. Justice Brewer in Schunk v. Moline, Milburn & Stoddard Co., 147 U. S. 500 (L. ed. 37, p. 255):

> "In short, the fact of a valid defense to a cause of action, although apparent on the face of the petition, does not diminish the amount that is claimed, nor determine what is the matter in dispute; for who can say in advance that that defense will be presented by the defendant, or if presented, sustained by the court? We do not mean that a claim, evidently fictitious, and alleged simply to create a jurisdictional amount, is sufficient to give jurisdiction."

and in speaking of a former decision, said:

> "In other words, it was held that although there was a perfect defense apparent upon the face of the petition, yet the court had jurisdiction—i. e., the right to hear and determine; and further, in that case, that the defense was not available when suggested for the first time in the appellate court. So here, the circuit court had jurisdiction, because the amount claimed was over two thousand dollars; and although it appeared upon the face of the petition that a part of the claim was not yet due, still the court had jurisdiction—the right to hear and determine whether this matter constituted a good defense to any part of the amount claimed."

So here, the court had the right to hear and determine upon the merits, whether this was the kind of a case where the joinder was right or wrong, but it has not heard the merits.

In other words, all of the steps in the various alleged wrongs in the joint taxation and all of the claims as to joint equitable ownership and the nature of the joinder claimed, are, as is immediately evident, justified as legitimate rights to be litigated in good faith, they are not frivolous, or well settled as to this sort of a case. It is therefore a legitimate claim of joinder on the one hand, of non-joinder upon the other, and there is not that legal certainty from the facts appearing on the record to justify dismissal.

b. THE GENERAL ALLEGATION OF AMOUNT IS SUFFICIENT.

There is a general allegation of amount in controversy that is sufficient (Tr. p. 2, f. 3).

The real nature, and not the name or form, of the tax is the test.

In Choctaw v. Gulf R. R. Co., 235 U. S. 292, it is said, at page 298:

> "Neither state courts nor legislatures by giving a tax a particular name, or by the use of some form of words, can take away our duty to consider its real nature and effect. Galveston, Harrisburg & San Antonio Ry. v. Texas, 210 U. S. 217, 227."

In Galveston, etc., Ry. v. Texas, 210 U. S. 217-227 (L. Ed. 1031), it is said:

> "A practical line can be drawn by taking the whole scheme of taxation into account. That must be done by this court as best it can. Neither the state courts nor the legislatures, by giving the tax a particular name or by the use of some form of words, can take away our duty to consider its nature and effect."

The scheme can be better seen from the briefs in case 104, which is to be argued on the merits with this case.

In St. L. & S. W. Ry. Co. v. State of Arkansas, 235 U. S. 350-362, the court said:

> "But when the question is whether a tax imposed by a state deprives a party of rights secured by the Federal Constitution, the decision is not dependent upon the form in which the taxing scheme is cast, nor upon the characterization of that scheme as adopted by the state court. We must regard the substance, rather than the form, and the controlling test is to be found in the operation and effect of the law as applied and enforced by the state. Henderson v. Mayor of N. Y., 92 U. S. 259, 268; Williams v. Mississippi, 170 U. S. 213, 225; Smith v. St. Louis & Northwestern Ry., 181 U. S. 248, 257; Stockard v. Morgan, 185 U. S. 27, 37; Reid v. Colorado, 187 U. S. 137, 151; Galveston, Harrisburg, Etc., Ry. v. Texas, 210 U. S. 217, 227; Western Union Tel. Co. v. Kansas, 216 U. S. 1, 27; Ludwig v. Western Union Tel. Co., 216 U. S. 146, 162; Sioux Remedy Co. v. Cope, decided November 30, 1914, ante., p. 197."

There is no certainty or even probability, in this record, that the amount is insufficient. Let us suppose the case of a trial upon this complaint with findings within its allegations to the following effect:

The members have the conditional joint equitable ownership of the corporate assets worth several hundred thousand dollars. The corporation is once fully assessed for the year in question in a lawful manner (Tr. p. 4, f. 7); it cannot raise the validity of the second assessment because it is nominally placed against the individuals, and yet the taxation was arbitrarily meant to reach in fact $5,000 per year upon the

corporate assets already taxed (Tr. p. 8, f. 12), as a deliberate and unlawful discrimination against this aggregate association in this form; the balance was to reach the corporate good will by attempting to charge it in form against proportionate corporate certificates under claim of privileges of membership; that every member has a lien worth more than three thousand dollars to secure him for every exchange trade, and upon every membership which is used in that trade (Tr. p. 3, f. 5), or that he has or has not an equitable interest which a court can protect as a joint member holding no stock in such an association, and that his equitable interest exceeds $3,000, exclusive of interest and costs; that the assessment and equalization as the basis for these taxes were considered and decided upon as a joint matter and the taxes spread in form against the individuals; that the common point of interest required for joining exists through the association, and is one of the issues here.

All these things are but the regular course which findings would essentially take under these allegations.

If a decision should be made on any one of these memberships upon any of these questions it would fix the status of all of them forever, and every other member would be deprived, by the litigation, from contesting the taxation unless he could join in the test case.

If the claims should turn out to be erroneous, that would not defeat the jurisdiction.

In short, enough appears to make it certain that the legitimate claim of common interest and common point of litigations to test these things is capable of being shown and that there is no certainty of inability to show it upon this record.

In the case of Wetmore v. Rymer, 169 U. S. 115 (L. Ed. 682), the court held that the Circuit Court should not dismiss the case for want of jurisdiction as to the amount unless the record facts create a legal certainty that the amount is insufficient.

c. THE PLAINTIFFS ARE NOT BOUND TO SIT IDLE YEAR AFTER YEAR, BECAUSE THE DAMAGE TAKEN SEPARATELY EACH YEAR IS NOT UP TO THE JURISDICTIONAL AMOUNT. FEDERAL COURTS DO NOT ALLOW WRONGFUL CONFISCATION BY DEGREES.

The learned trial court, as we believe, committed the error of classifying this cause as if each member were fighting a legal battle dependent in no way upon his relations to the other members in the Chamber, while the gist of the action is, that his joint relations with all of the members is just the thing that the defendants claim gives value to his interest in the corporate assets and also to the intangible privilege by creating a sort of fictitious value for the joint relationship; it is the only possible excuse for the taxation of the memberships in addition to the physical assets of the company; those relations and the conditions growing out of them, as a whole, would be the basis claimed for distinction between this, and other, corporate organizations if an issue should be taken on the distinction.

The person taxed is not required to abandon all hope of the protection of property up to, and above, the value of $3,000 because it is being wrongfully taken by taxes, in chunks, each of which is less than the jurisdictional amount. Such claim was made in the City of Hutchinson v. Beckham, 118 Fed. 399 (8 C. C. A.), but Judge Thayer said of it:

> "We think, however, that this view of the case is too narrow and technical. The right which the complainants asserted was the right to transact their business in the city of Hutchinson as theretofore, without being subjected to the onerous and discriminating tax which the municipality had seen fit to impose."

In the case above, the right to be protected was the privilege of doing business in the town. In this case, one right to be protected is the privilege of transacting business in the exchange.

It is true that the Hutchinson case was one where the enforcements were partially by arrests; but the value of the right to do business, and not the fines imposed, was the test applied, because that value, in fact, was the value in controversy. So it is here. The state attacks the right to do business, as it did there, with a tax which it threatens to yearly

take and to impose for several years in the past (Tr. p. 8, fol. 12), although it be without statutory authority. If, therefore, the membership and its right to protection from being taken without due process, or its right to protection against arbitrary and discrimatory double assessments and constant litigation, or the systematic enforcement of a unified course of single conduct against their joint interests in fact, but, against members in form which threaten their joint benefits and joint property of the association, be, as it is, the gist of the action, certainly no member is required to wait until his property is dissipated, even though the instant damages at law would not be sufficient to reach the jurisdictional amount, as to each member.

This phase of the situation is nicely stated by Judge Hook in Board of Trade v. Cella Commission Co., 145 Fed. 28 (8 C. C. A.), wherein it was claimed that the injuries to the quotations were not enough to make jurisdictional damages, but the court disposed of the claim adversely, saying:

> "In a suit to enjoin a threatened or continued commission of certain acts the amount or value involved is the value of the right which the complainant seeks to protect from invasion, or of the object to be gained by the bill. It is not the sum he might recover in an action at law for the damage already sustained, nor is he required to wait until it reaches the jurisdictional amount. In City of Hutchinson v. Beckham, 55 C. C. A. 223, 118 Fed. 399, a decree was sought to enjoin the enforcement of an illegal license tax imposed upon complainant's business by a city ordinance, which was being enforced by the arrest of its employes. We held that for jurisdictional purposes the amount involved was the value of complainant's right to conduct its business without being subjected to such a burden, and not merely the amount of the tax demanded."

In Hunt v. New York Cotton Exchange, 205 U. S. 322 (L. Ed. 821), in a similar quotation's case, it is said:

> "The object of this suit is to protect that right. The right, therefore, is the matter in dispute, and its value to the exchange determines the jurisdiction, not the rate paid by appellant to the telegraph company. The value of the right was testified to be much greater than $2,000."

So here, the value of the individual right to use the mem-

bership with its interest in the association and liens upon other memberships, without having it and all others upon which he has the lien, and in the protection of which it is claimed he cannot join, subjected to double assessments and annual law suits to protect its value and title, are clearly involved, and therefore the value of the membership and the interest which it represents in the property, with the interwoven relations with all other members—more than $3,000 in amount—are the rights sought to be protected from invasion, and not the pittance of a tax. Indeed, it is, and ought to be, the rule, that the protection of property of this amount from actual or presumptive prejudicial local onslaughts was the reason for investing Federal courts with authority on the basis of amount and citizenship.

A case which is instructive is that of Scott v. Donald, 165 U. S. 107 (648), where the plaintiff had certain liquors in value more than $2,000; he shipped in a portion that were seized; threats of seizing the balance were shown, and the total value was held to be the test. Mr. Justice Shiras says:

> "Such statements sufficiently concede that the pecuniary value of plaintiff's rights in controversy exceed the value of $2,000. Nor can it be reasonably claimed that the plaintiff must postpone his application to the circuit court, as a court of equity, until his property to an amount exceeding in value $2,000 has been actually seized and confiscated, and when the preventive remedy by injunction would be of no avail."

So we might equally say here. The plaintiffs must act or lose the benefits of action. Such inaction means inadequate relief, and a taking of property without due process of law. The situation is too serious to require them to take chances on defeating each law suit or standing the penalty of each year's default and litigation.

It has not been the policy of the Federal courts to shy at hearings in cases where the course of the state law imposes such burdens in penalties and litigation as make the matter one of prohibitive defense. In Ex Parte Young, 209 U. S. 146, it is said, at page 1461:

> "The officers and employes could not be expected to disobey any of the provisions of the acts or orders

at the risk of such fines and penalties being imposed upon them, in case the court should decide that the law was valid. The result would be a denial of any hearing of the company."

In Berryman v. Board of Trustees, 222 U. S. 333 (L. Ed. 225), Chief Justice White says:

> "The taxing officers of the county of Walla Walla, the defendants below and appellants here, insist that we may not review the merits, because the court below had no jurisdiction over the cause, and therefore we must reverse and remand, with directions to dismiss the bill. This rests upon the proposition that, as the tax was below the jurisdictional amount, it afforded no basis for jurisdiction. The sum of the levied tax, it is urged, could not be increased by considering the power of taxation which might be exerted in other taxing districts, or by adding taxes which, if the right to tax existed, might be assessed and levied in future years. This, it is insisted, is not only sustained by reason, but is sanctioned by prior decisions of this court. *Both assumptions are wrong.*"

A good illustration of this is to be found in the case of McNeill v. Southern Railroad Co., 202 U. S. 543 (L. Ed. 1142). The question was raised there as to whether the amount of $2,000 was involved exclusive of interest and costs. Suit was brought over a demurrage bill of $146; but it was held that the real object of the bill was to restrain the illegal interference with the property and interests of the railroad company in violation of the constitution of the United States, which was worth the amount; the invalidity of the order in question was adjudged and the defendants were restrained from the institution of suits or actions for the recovery of penalties or damages founded upon the disobedience of such order, and forbidden future interference under like circumstances and conditions with the interstate commerce business of the railway company.

The allegations of this complaint bring the case within the rule of rights dependent upon the confiscation or injury of a valuable right by degrees where the right is the thing to be protected as well as the same associated right or claim, and take it entirely without the class of cases which depend upon

no common or associated relationship or interest, where the trial court, as we believe, mistakenly placed it.

The learned trial court appreciated that all these common and joint relationships existed and had to be determined in order to dispose of the question of whether each one was properly taxed (Tr., pp. 25-26, ff. 35-36); but was the opinion that the ultimate tax was the only jurisdictional question, as it would be under Wheless v. St. Louis, 96 Fed. 865 (180 U. S. 379), where the assessment was one dependent upon common rules of law, but not dependent upon common interests.

That case was one of threatened special assessments for street improvements; and in order to leave it clear this court said:

> "And it was admitted that the various lots of land threatened with assessment were owned in severalty; that no one complainant was interested in the lot of any other; and that the assessment against no one lot would amount to $2,000."

That case cited and relied upon cases like Walter v. N. E. Ry. Co., 147 U. S. 370; but citing the Walter case, and even much later cases, including Holt v. Ind. Mfg. Co., 176 U. S. 68, all indiscriminate doubts have been set at rest by the later case of Berryman v. Trustees, 222 U. S. 333 (L. Ed. 229), by this language:

> "Measuring the contention as to the absence of the jurisdictional sum by the principles thus established, it answers itself, since the argument is equivalent to saying that a subject which is necessarily included in the relief to be granted, and is, in the nature of things, concluded by the decree to be rendered, is yet excluded from consideration for the purpose of the issues in the cause,—that is, may not be taken into account in ascertaining whether there is jurisdiction over the controversy.
>
> "We state in the margin the cases principally relied upon to support the contention as to the want of jurisdiction. It would suffice to say of these cases that if they supported the proposition which they are cited to maintain, they have been qualified and restricted by the cases which we have just reviewed. But such result is uncalled for, as an analysis of the case will show that all of them considered, in the absence of contract, where the right to levy a particular tax was assailed, whether there was authority to make up the jurisdictional amount required, by calling into the consideration the influence which the judgment might have had upon dif-

ferent taxes or the power to take in view future illegal taxes, upon the theory that they might be levied."

Thus we see that the very kind of cases upon which the trial court relied are not to be construed as covering this sort of a case; but that they *"have been qualified and restricted"* by the later decisions reviewed in the Berryman case.

The Berryman case is a recognition itself of the fact that the right of property to be permanently exempted from taxation and which is necessarily concluded by the decree and not the incidental annual tax, is the point which controls as to jurisdiction. There is here then jurisdictional amount as to each member, because the protection of the whole membership with its interests in the association and the other memberships from wrongful threats, taxes and suits, and their joint equitable property and common rights therein, and from arbitrarily discriminatory official invasions against acts upon the association and the other memberships controlling his rights are the things to be protected.

d. REGARDLESS OF WHETHER ONE OR MANY OF THE MEMBERS ARE PLAINTIFFS, THE DECISION WOULD DISPOSE OF THE WHOLE QUESTION AS TO ALL AND MAKE IT RES ADJUDICATA.

This case involves not alone the rights of each membership, but challenges the validity of the system and the tax upon all of the memberships, as well as their joint relations and joint assessment. This would be the inevitable result if there were but one plaintiff, or but one defendant in a suit to collect the tax even while all others sat back. The object of the taxing officers was to tax the memberships as one matter; the assault upon their conduct, whether for one or many, must be as to the whole of that action, treated as one by the assessor, as one by the Equalization Board, as one by the Tax Commission (Tr., p. 7, f. 11), and must be decided as one question every time it is passed upon whether for one or many members. Either the determination of the assessor to tax all, and that of the boards to leave it to the courts, and that of the officers to enforce all, is valid or invalid. The test is of the whole; so is the amount involved. The principle calls

in question the whole thing. The first final judgment upon it would include the whole thing.

The case of McIntosh v. City of Pittsburg, 112 Fed. 705, in the Western District of Pennsylvania, was on an ordinance for the widening of a street. An action was brought in the state court to test the ordinance by some of the property owners affected. After the state decision went to final judgment, a non-resident who had not appealed sued in the Federal Court and it held that the state decision was conclusive not only upon the actual parties, but upon the property owners similarly affected who might have become parties, and was a bar to the federal suit. The Federal Court said:

> "A judgment against a municipality or its legal representatives in a matter of general interest to all its inhabitants—for example, respecting the levy and collection of a tax—is conclusive not only upon the municipal defendant, but upon all its inhabitants, though not made parties. Such inhabitants cannot collaterally attack such judgment, or relitigate the subject-matter."

It is clear from this opinion that it makes no difference, in the result to other taxpayers, whether one or many are parties plaintiff. The whole proposition is determined in the one litigation and that is a common practice in tax suits. Judge Buffington there cites "The Methodist Case' 'and a number of others.

In Smith v. Swormstedt, 16 How. 302 (L. Ed. 942), generally known as the Methodist Church case, the court pointed out the value of such suits as here brought, but of that we shall see more later.

In speaking of a suit where it was pointed out that the matter contained in one bill in equity, with about eighteen defendants, would otherwise have to be sued separately four times, Judge Thayer, in Ill. Cent. Ry. Co. v. Caffrey, 128 Fed. 770, said:

> "It is not probable that, if that number of actions were instituted, there would be more than one trial, since the decision of one case would determine the others, etc."

Undoubtedly the rule is clear and well founded that when taxing officers are made parties to a suit to determine the val-

idity of a particular tax, and the tax is upheld, other and new parties cannot sue even with additional points which might have been presented, because the matter is *res adjudicata* by reason of the first decision.

Of the cases cited by Judge Buffington above, we call attention to a few of the principles involved: In Lyman v. Ferris, 53 Ia. 498 (5 N. W. 621), a petition was brought by taxpayers to prevent the levy of taxes in aid of the construction of a railway. The petition alleged that the taxes were illegal and void and asked that the county treasurer be enjoined from collecting the same. The validity of that tax had been upheld in a previous decision in an action against the treasurer to obtain a writ of mandamus to compel the collection of taxes; there was no showing in the second action that there was any collusion or fraud in the first action, and the court said:

> "The only difference is that the plaintiffs claim that there are other grounds for declaring the tax void than those adjudicated in the former actions. This can be of no more avail to the plaintiffs than it would be to the original parties. If the validity of this tax was determined without fraud or collusion, that determination is conclusive upon the parties and their privies."

The case of Sauls, et al, v. Freemont County Com'r., et al., 24, Fla. 222 (4 Southern 525), was a county seat fight. There was an action of mandamus against the county officers, and in an action by taxpayers subsequently, it was held that the judgment against the county, or its legal representatives as such in a matter of general interest to all of the people thereof, was binding upon all of the citizens of the county in the absence of a showing of fraud between the officials and the opposing parties.

Ashton v. City of Rochester, 153 N. Y. 193 (30 N. E. 965), was a case where the common council had reconsidered and postponed indefinitely a resolution directing a public improvement. The court had granted a peremptory writ of mandamus, on application of some of the property owners, compelling the officers to proceed on the resolution and award the contract, and after the contract had been let and the work done other taxpayers undertook to raise the question and were

held precluded as having been represented by the city through its proper officers; they had known of the mandamus proceedings; did not ask to be made parties, and were held estopped by the former decision, the court saying:

> "When a judgment is rendered against a county, city or town in its corporate name, or against a board or officer who represents the municipality, in the absence of fraud or collusion, it will bind the citizens and taxpayers."

One of the cases cited by Judge Buffington is Cromwell v. County of Sac, 94 U. S. 351 (L. Ed. 195). That was an action against a county in Iowa upon certain interest coupons attached to bonds for the erection of a court house. There had been a prior action which determined the invalidity of the bonds as to one who was not a bona fide purchaser. In the later case another party brought suit and showed that he acquired the bonds as a bona fide purchaser and recovered on that ground. The court said:

> "The finding and judgment upon the invalidity of the bonds, as against the county, must be held to estop the plaintiff here from averring to the contrary."

It is manifest from this decision, as we think, that the rule is applicable upon principle to a case of this sort. It is the inevitable result of a public policy which allows the decisions of the courts, in a public matter, to be a settlement of a particular controversy.

That all of these plaintiffs did know of this action is evidenced from the fact that they joined in it; that their rights will all be determined, whether one or many join, is very clear. This means that the determination of the question, whether made for one or many, must be of the whole controversy, the whole tax, the whole of every question in issue. The fact that it may have a segregated effect upon the individuals, or that any one of them might be able to pay his tax and personally drop out of the controversy, makes no difference, as we shall see under the next subdivision.

As bearing upon the element of public policy in Fairweather v. Rich, 195 U. S. 275 (L. Ed. 193), Mr. Justice Brewer said:

> "Private right and public welfare unite in demanding that a question once adjudicated by a court of competent jurisdiction shall, except in direct proceedings to review, be considered as finally settled and conclusive upon the parties. *Interest reipublicae ut sit finis litium.*"

Of course, the Eighth Circuit Court of Appeals has had occasion in many instances to discuss matters of *res adjudicata,* but the case of Fitch v. Stanton, 190 Fed. 310, seems to us to illustrate this principle well. That was a case wherein the validity of certain municipal bonds in Kansas was brought in question in an action tried out in the courts of Kansas in which the bonds were held invalid. In a subsequent suit from the Federal Court in Kansas, growing out of certain coupons upon the same issue of bonds, *that court held* that the issues were identical and prevented a suit upon coupons subsequently accruing, Judge Reed saying:

> "The validity of these bonds was directly involved in that suit, and it was there adjudged that they are void. The estoppel against the appellant resulting from that judgment is not dependent upon the demand involved in this suit, being the same as that involved in that suit; but is dependent upon the questions here involved being identical with those involved in, and determined by, that suit."

In the subsequent case of Hickman v. Town of Fletcher, Colo., 195 Fed. 907, *that court* said:

> "It may be conceded that the causes of action are different, for each bond and each coupon is a separate cause of action. The identity of the demands or causes of actions in the two suits is, however, not alone the test by which the conclusiveness of an estoppel by judgment is determined, but it is the identity of the questions in issue and actually determined in the prior action, with those involved in the action in which the prior judgment is pleaded as an estoppel."

Therefore, the action determined not only the question of whether $38.77 should be paid by a particular individual, but whether $21,323.50 should be paid by all of them, per year.

The only theory upon which all members, under these circumstances, would not be indispensable would be that the judgment would bind them anyway. Of course no court would keep them out upon their application to be joined, if but one were a party.

When there is a fair hearing upon the proposition the question of taxability will become *res adjudicata*, whether the trial was for one, or many members, because it is the question of the action in creating and undertaking to maintain the assessment, as against the members or of their interests in the joint property and privileges of the association that is the gist of the action; the interests are identical and common; the facts are identical; the law is identical; the segregation of this institution, for the purpose of taxing its property and memberships, and leaving those of other institutions untaxed, and the question of whether there is a basis for assessment, each must be decided as being either rightful or wrongful. Does the county get the whole tax, or none? This question must be answered. The decision in effect must involve the whole controversy and it is far beyond the jurisdictional amount, upon any trial that could be had.

e. WHERE THE CONTROLLING OBJECT OF THE SUIT IS, AS HERE, SOMETHING COMMON TO ALL, AND INDIVISIBLE, THE AMOUNTS MAY BE AGGREGATED, ALTHOUGH EACH INTEREST IN SO FAR AS DIVISIBLE, IS INSUFFICIENT IN AMOUNT AND DIVISIBLE AS TO ALL OTHERS.

The complaint alleges:

> "That the Chamber of Commerce of Minneapolis is an institution incorporated under Chapter 138 of the General Laws of Minnesota for the year 1883; *that said institution is a corporation in the nature of a voluntary association.*" (Tr., p. 2, f. 4).
>
> That it controls "the affairs of its members in their relations with each other and it; it is a grain exchange wherein the members transact business for themselves and their customers only and not for said association; that it also has rules and regulations under and by which the interests of every member in it, and in and to their memberships in it, are held subordinate to its rules and regulations for admission." (Tr., p. 3, f. 5.)

In brief, it further alleges that by written applications and agreements the memberships are only conditionally owned; that the ownership is subject to, or clogged with, such conditions as t oacquisition, use, liens, control, fine, suspension, sale, disposal and descent, as to take them outside of ownership in the general sense, and to make it necessary to pass upon the

interwoven rights and general relations—to determine the whole question in regard to the first one tried.

Then follows a statement in paragraph X (Tr., p. 5, f. 8), showing how these memberships were taxed on a different basis for the preceding year, and how discriminations were made and these taxes threatened.

Turning then to the allegations that each membership was taxed in 1912 for $3,500, and each in 1913 for $1,100 (Tr., p. 6, f. 8), that there are 550 members with taxes on each membership of $38.77, so that the total yearly taxes would be $21,323.50; deducting the taxes of $5,000 (Tr., p. 7, f. 10), for the physical assets, and considering them fully taxed (Tr., p. 4, f. 7), we find that $16,323.50 of this tax is either arbitrarily made, or a part is double and a part borne for mere *privileges* of membership—the liberty of aggregate association, or good will. The allegation is also clear that this association does not transact business for profit (Tr., p. 5, f. 7). From these things, the inevitable conclusion is that the privileges of membership as a part of common privileges in a joint association are meant to be taxed. It is at once evident that the value of association, in so far as it can be called valuable, in any voluntary association rests upon the joint membership. A social club, or any other voluntary association, could not, and would not, exist with but one member. No advantages could come even to a hermit by calling his house a "club" or an "exchange." The basis of this organization is that of common association—that is all there is to the *privilege* portion. The question, therefore, of taxability here—so far as the annual tax of $16,323.50 is concerned, is based entirely upon this point, intangible relation and the balance is double taxation on the assets. Indeed, the tax officers overvalued the real estate of the Chamber $171,500 each year for several years, until stopped by the Tax Commission, in an attempt to reach the privileges of membership, and now threaten to retax that for the same period on the memberships.

Of course that is a joint matter; the taxing officers in creating the tax, the Board of Equalization and Tax Commission in

passing upon it, and the plaintiffs in suing, have so understood and so treated the matter; *in fact it is one matter*, involving incidental individual rights.

These matters are so interwoven as to furnish the claim in this very action—supported by almost unanimous precedents—that none of these memberships are "property" in the sense of the general language of the taxing laws.

How, for instance, could the court decide whether $5,500 per year had been wrongfully taxed against the Chamber to reach these memberships, and that threats were made to tax the memberships to cover the same period, without deciding the question as a joint matter in effect?

The case of Troy Bank v. Whitehead & Co., 222 U. S. 39, holds that where the parties had notes there that were separate obligations, yet there was a vendor's lien which was a single thing, the entity in which they had a common and undivided interest and which neither could enforce in the absence of the other. This rule is only stated generally by Mr. Justice Van Devanter in the above case with citations.

One of the cases cited is Shields v. Isaac Thomas, et al., 17 How. 3 (L. Ed. 93), where the representatives of a deceased intestate recovered a judgment against the husband of the administratrix for over $2,000 for misappropriation of the funds of the estate, but the amount of each individual was directed to be paid direct to the respective heirs and each amount was very much less than the $2,000 limit. But the court held that the amount in controversy was the sum due to the representatives of the deceased, and not the particular sum to which each was entitled when the amount due was distributed among them by the decree according to the laws of the state. The court said:

> "He disputes the validity of that decree, and denies his obligation to pay any part of the money. And if the appellees maintain their bill, he will be made liable to pay the whole amount decreed to them. This is the controversy on his part, and the amount exceeds $2,000. We think the court, therefore, has jurisdiction on the appeal."

A good case upon this element is that of Washington Mar-

ket Co. v. Hoffman, 101 U. S. 112 (L. Ed. 782), which also involved memberships in a market. There were 206 complainants suing jointly, seeking an injunction against the Market Company, with a decree establishing the right of each to continued occupancy of his stall; the *stall* in that sense being used as it is in some *traders' market*, while others use *seats* and others *memberships*. The court rendered a final decree enjoining the Market Company from selling or offering for sale the stands or stalls, or any of them, and held that their rights did not terminate within a certain time. The Market Company appealed from that decree. *One valuable and applicable thing there was that a single member first undertook to sue alone:* subsequently the bill was amended to bring in all the members. This simply indicates the necessity of their joinder, as we claim. Mr. Justice Strong said:

> "The first question to be determined is, whether the amount in controversy is sufficient to give us jurisdiction of the appeal. Upon this we have no doubt. While it may be true, that if Hoffman was the sole complainant, the amount in controversy would be insufficient to justify an appeal either by him or by the Market Company, the case is one of two hundred and six complainants suing jointly, the decree is a single one in favor of them all, and in denial of the right claimed by the company, which is of far greater value than the sum which, by the Act of Congress, is the limit below which an appeal is not allowable. It is averred under oath in the pleadings, that the sale which the company proposed to make, and the court below enjoined, would have realized to the Market Company more than $60,000. Of this benefit the decree deprives them. It is very plain, therefore, that the appeal is one within our jurisdiction."

In Davies v. Corbin, 112 U. S. 36 (L. Ed. 627), the court had the converse of the proposition before it. Certain individuals recovered separate and distinct judgments in the United States court against a county in Arkansas. The aggregate of the judgments was much more than $5,000, but the amount due each was not stated. After the judgments were recovered the several parties commenced proceedings in the county court to require a tax to be levied for the payment of the respective amounts owing to them; several writs of mandamus were issued. It was then agreed that if the county court would levy

and collect a tax of ten mills on the property of the county, and distribute it pro rata among the relators, and others, that that would be accepted as a sufficient compliance with the various writs of mandamus. The county court carried out the agreement and levied the tax, which was spread upon the tax books and placed in the hands of the collector, Davies, with the other taxes of the year. He proceeded to make collection, until a complaint was filed against him by an owner of real estate to the effect that a valid assessment had not been made; that the board of equalization had been illegally organized and proceeded unlawfully to change the assessments; and denied that there was either a valid equalization or assessment for the year.

A temporary injunction against the collector was issued by the court, and in obedience thereto he stopped the collection of the ten-mill tax, although he proceeded with the balance of the collection.

The relators who held these separate judgments and separate writs of mandamus then applied to the Federal Court for a rule on the collector to show cause why a peremptory writ should not issue commanding him to proceed with the collection of the ten-mill tax. After hearing, the Federal Court awarded the writ and the collector took a writ of error to the Supreme Court of the United States. A motion was made to dismiss the writ on two grounds, one of which was that the matter in dispute did not exceed $5,000 inasmuch as no one of the relators would be entitled to that amount of money on his judgment, and no single taxpayer would be required to pay that amount of tax; but the court said:

> "As in the case of Shields v. Thomas, 17 How. 5 (58 U. S. XV, 94), and the Connemara, 103 U. S. 754 (XXVI, 322), all the relators claim under one and the same title, to-wit: the levy of a tax which has been made for their benefit. They have a common interest in the tax, and it is perfectly immaterial to the tax collector how it is divided among them."

In that case each of the defendants in error recovered a *separate* and *distinct* judgment in the Circuit Court against the county. The aggregate of all the judgments was more

than $5,000. They commenced a proceeding to compel the county court to levy a tax for the payment of the amounts due them respectively, and the court said:

> "As the matter stands each relator has the right to have the whole tax collected for the purpose of distribution among all the creditors. It is apparent that the dispute is between the tax collector on one side and all the creditors on the other, as to his duty to collect the tax as a whole for division among them, after the collection is made, according to their several shares. The value of the matter in dispute is measured by the whole amount of the tax and not by the separate parts into which it is to be divided when collected."

Other Line Distinguished.

There is a line of cases, such as Walter v. Railroad Company, to the effect that the jurisdiction can only be sustained as to those whose claims which exceed the jurisdictional amount, if the interests are wholly disconnected; but the rule is quite the other way when there is a common interest between a number of individuals, and when the whole controversy in effect must be determined.

The Circuit Court in the eastern district of Arkansas, in the case of McDaniel, et al., v. Traylor, 123 Fed. 338, undertook to apply the case of Walter v. Railroad Company to a suit by heirs to set aside a number of fraudulent judgments rendered by a probate court. *This court* reversed the case, 196 U. S. 415, upon the theory that the *aggregate* amount should be taken, because all the judgments were procured by conspiracy. The opinion by Mr. Justice Harlan reviewed a number of cases, including that of Walter v. Railroad Company, and then said:

> "There is no dispute as to the amount of any particular claim. So far as the bill is concerned, if any one of the specified claims is good against the estate of Hiram Evans, than all are good; if the lands in question, or any interest in them, can be sold to pay one claim, they must be sold to pay all. The court could not, under the bill, enjoin the prosecution of one claim and leave the others untouched. The matter in dispute is whether the lands in which the plaintiffs have a joint, undivided interest of one-half can be sold to pay all the claims, in the aggregate, which the defendants by combination and conspiracy, procured the probate court to allow against the estate of Hiram Evans. The essence of the suit is the alleged fraudulent combination and conspiracy to

fasten upon that estate a liability for debts of John Evans, which were held by the defendants, and which they, acting in combination, procured, in co-operation with James Evans, to be allowed as claims against the estate of Hiram Evans. By reason of that combination resulting in the allowance of all those claims in the probate court, as expenses of administering the estate of Hiram Evans, the defendants have so tied their respective claims together as to make them, so far as the plaintiffs and the relief sought by them are concerned, one claim. The validity of all the claims depends upon the same facts." McDaniels v. Traylor, 123 Fed. 338.

In that case *the court held that the interests of any one of the claimants could be sold* out without selling them all out, and that the court could not enjoin the prosecution of one claim and leave the others untouched. So it is here. It would not be possible to enjoin this system of arbitrary and fraudulent taxation as to one member without enjoining as to all. As stated in the McDaniel case.

."The validity of all the claims depends upon the same facts."

The action of the taxing board as to all of these memberships, segregating them and arbitrarily taxing them together, without legal authority, is as much a single action by the taxing officers as if it had been a judgment affecting the memberships jointly. In the McDaniel case the court reviews the doctrine of the interesting case of Shields v. Thomas, 17 How. 3, (L. Ed. 93) wherein it was held that the entire judgment of the Kentucky court was the amount in dispute, although none of the claimants to that amount was claiming as much as the jurisdictional amount. The court points out how it had followed the Shields case in Overby v. Gordon, 177 U. S. 214, (L. Ed. 743) and cited a number of other cases, to the same effect.

It disposes of the argument that a *single one of the claims could have been released* by the payment of the particular sum (just as it was suggested below that the payment of the tax by any individual for a single year might release his membership of the *dangers of a lien for that year*), in this language:

"It is said that as to any single one of the claims in

> question the plaintiffs in the present case could have released the lands in which they had an undivided interest by paying that particular claim; therefore, it is argued, the value of the matter in dispute, as between the plaintiffs and such defendant, was the amount of the latter's claim. And so as to each separate claim. But that same thing could have been said as to the respective claims involved in Shields v. Thomas. The defendant there could have paid off any of the respective claims involved. This court, however, held that fact to be immaterial because the defendant disputed the validity of the original decree holding him liable for all the claims, and had no concern as to how the whole amount decreed against him was to be distributed." McDaniels v. Traylor, 196 U. S. 415 (L. Ed. 533).

There was a common controversy, and the aggregate, as distinguished from the individual, amount, was the correct amount for the determination. *The reason is very simple, for the decision whether made for one or many, had to consider the validity or invalidity of the entire action in rendering the judgment, just as it will have to consider the validity or invalidity of the entire assessment here, both upon the assets and memberships, and the value of these memberships, and whether or not the whole of these memberships are property at all in the taxing sense.*

These matters were reviewed in Berryman v. Board of Trustees, 222 U. S. 334, (L. Ed. 225) and referring to such cases as Walter v. Railroad Company, it is said:

> "We state in the margin the cases principally relied upon to support the contention as to the want of jurisdiction. It would suffice to say of these cases that if they supported the proposition which they are cited to maintain, they have been qualified and restricted by the cases which we have just reviewed."

It is therefore evident that the court does not wish to be understood as either literally applying or extending that class of cases, and why should it? When the truth can be jointly determined on consideration of a just right, on an otherwise sufficient value, that is enough.

It would seem as if the principle here involved has been clearly decided by the foregoing cases.

In the case at bar the conditional value of each membership is claimed to be over the jurisdictional amount. The

value of the real estate and the alleged value of the joint privileges of the membership, the aggregate value of annual taxes upon each, the value of aggregate taxes assessed on one determination to cover the privileges, and which are now threatened to be reassessed; the matters of conditional ownership, and the interlocking and interwoven rights as between the members upon the one side, and the defense that the action by all of them was justified upon the other side, would each seem to unquestionably involve the jurisdictional amount.

The Shields case points out *that upon the one side the validity of the decree* was disputed to the whole amount, and that that was the controversy. In this case the joint rights are claimed, and both the joint and several rights are denied to the full extent upon the other side.

In the Washington Market Co. case the amount of money of which the *defendant would be deprived by the decree* was held to give jurisdiction.

In the Davies case the relators claimed under the *levy of a tax* which was made for all, but for their individual benefit.

In the McDaniel case the *conspiracy of the defendants*, which caused several judgments to be entered that became liens upon the property of certain heirs, which property would be inherited by those heirs, was held to aggregate the amounts for the purpose of determining jurisdiction.

The peculiarly applicable thing here is that *in each of those four cases the money was to be divided, when recovered, or the benefits of the injunction to operate, when obtained, directly to the individuals in the same way that it would operate here; and in every one of those instances the point was specifically decided against them.*

In the Shields case the decree ordered that the money that had been misappropriated should be returned in direct proportions to the *several heirs*, no one of which would get the jurisdictional amount.

In the Washington Market Co. case each member of the Market Company was *personally* to *get his seat* in the market.

In the Davies case *each individual that owned* a judg-

ment against the county would get his share of the taxes paid direct to him when the taxes were collected.

In the McDaniel case *each heir was to be individually benefited* by the result of the decree which would declare the placing of certain liens upon the property to be unlawful.

And in *each* of *those instances* the *amount involved* was determined by the *general scheme*, and the *result* which would follow *to the defendant* in the case and the *ability to protect all* of the other parties *jointly* by the *same litigation*.

It will be noticed that in one there was a judgment *based upon conversion;* in another, there was a *decree requiring* county officers to *proceed* with taxes; in another, there was an action to set *aside liens* obtained by *fraudulent conspiracy;* and in the fourth, or Market case, an *action to prevent the interference with* the rights of *membership or seats in the Market Company*.

In every one of the cases the identical facts, the same law, and the same results were to be found, and each case was planted upon the theory of the wrongful conduct of those for whom the defendants were responsible, or the defendants themselves. In no one of those cases were the relations of the individual plaintiffs as close, or as common, or as definitely interwoven, or as clearly affected by the particular litigation, if carried on by any one of the plaintiffs, as they would have been in this case, for in every one of those instances there are elements of joinder and common interest lacking that exist here, and especially in those against the private parties.

Besides the things to be protected against the unlawful action here is the property owned in equity jointly; the privileges of membership arising entirely from the common association, and the conditioned ownership of memberships and contractual liens between the members as against the action of unequal assessments claimed to be made without authority. The protection of these rights is the real controversy, the amount of the tax, but an incident as in the Berryman case supra.

f. MEMBERS OF THIS SORT OF ASSOCIATION HAVE INTERWOVEN AND COMMON INTERESTS UNKNOWN TO ORDINARY STOCKHOLDERS, EVEN ORDINARY STOCKHOLDERS WOULD BE INDISPENSABLE IN SUCH CASE, AND THE MEMBERS HERE ARE CLEARLY INDISPENSABLE, EVEN THOUGH OMITTED IN NAME, THEIR RIGHTS ARE INDISPENSABLY CONTROLLED.

We have pointed out in subdivision "d" supra, how the determination of this question as to a single member determines it for all; in subdivision "e," supra, we have also shown that the validity of the assessment upon the merits is substantially dependent upon the nature of the amount of assessment made upon privileges on the joint association of the members, and the other half is based upon a second assessment of the joint assets of the members. In order that this may be fully comprehended, we call attention to the allegations in subdivision VIII of the bill, (Tr. p. 5, fol. 7) wherein it is shown:

(a) That the memberships have no tangible value above the assets fully taxed to the corporation;

(b) That the intangible value is conditioned upon the rules and regulations for acquisition, control and disposal beyond and outside of ordinary legal obligations, and upon the business character of the member (Tr. pp. 3-4, fols. 5-8); that the assessors, the equalizers and the Tax Commission all treated the matter as a joint one, (Tr. pp. 5, 7, fols. 8, 11). The complaint further alleged, in subdivision XV. (Tr. p. 7, fols. 11-12.)

> "That the rules and regulations of said Chamber of Commerce voluntarily made by said members and in force at the time of the assessment made, and now make, the relations of each membership and the value thereof interdependent upon the rights and restrictions in favor of each of the o[illegible] assessment was necessarily made as a joint action by said assessor as against all of said members reckoned collectively; that in making said assessment the assessor necessarily reckoned that said members were jointly interested in the real estate of said corporation and that their memberships jointly got their principal value therefrom; and that they each and all stood in exactly the same position except as to residence; that in passing upon the validity of said assessment each of the Boards of Equalization necessarily considered said memberships in respect to their joint interests in the corporate assets; that plaintiff

> alleges that said memberships are so interwoven with their relations to, and rights upon each other, and as to said real estate as to require consideration and decision thereof as an indispensably joint matter; that said assessment was and is a second assessment upon the joint assets of said memberships in said proceeding and in this action; that such a determination of the facts and law when made, whether as to one or all, must be as a whole and bind all, and the effect of the judgment and decree must necessarily involve their joint relations, rights and limitations upon all of the memberships and their joint rights in and to the assets of said corporation and the joint action in the assessment and other treatment said questions of joinder each involves an amount in excess of $3,000 in value over and above interest and costs."

In other words, the determination of the interests of each member is going to preclude further litigation by each of the others and rule the disposition of all. The *facts are such* that the *showing on the merits* of the case of *each member cannot be made* sufficiently to *determine the assessability without trying his relations to all the members.* This brings it within the rule of *indispensable* parties. Every member would be directly affected by the first decree entered on said matter. (Representative parties are considered below.)

The rule with respect to indispensable parties is stated in Williams et al v. Bankhead, 19 Wall. 563 (86 U. S. 184) through Mr. Jutsice Bradley, as follows:

> "First. Where a person will be directly affected by a decree, he is an indispensable party, unless the parties are too numerous to be brought before the court, when the case is subject to a special rule."

In Street's Federal Eq. Practice, Vol. 1, Sec. 507, p. 311, in discussing parties, it is said:

> "One of the most intelligible and suggestive ways of putting the ideas embraced in the preceding extracts from the decisions of the supreme court is found in the following language of one of our circuit judges:
>
> "Donovan v. Campion, C. C. A., 1898, 29, C. C. A. 30, 85 Fed. 72. Said Judge Sanborn: 'Every indispensable party must be brought into court, or the suit will be dismissed.' * * * The old chancery rule is that all those whose presence is necessary to a determination of the entire controversy must be * * * made parties to the suit. The former are termed the 'necessary' and the latter 'proper' parties."

Again the language in Rogers et al v. Penobscot Mining Co. et al, 154 Fed. 606-610, is:

> "An indispensable party is one who has such an interest in the subject-matter of the controversy that a final decree cannot be rendered between the other parties to the suit without radically and injuriously affecting his interest, or without leaving the controversy in such a situation that its final determination may be inconsisent with equity and good conscience."

The fact that some members act by representation, or that they are bound by the single decision does not change the rule as to the necessity of determining the whole interests.

It is interesting to note that the *New Equity Rules were planned upon this theory.*

Equity Rule 37, which seems to be new in the Federal Court Rules, but old in principle elsewhere, contains the following clause:

> "All persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs, and any person may be made a defendant who has or claims an interest adverse to the plaintiff."

If then these parties have an interest in the "subject of the action," and in obtaining the relief demanded, they may join. The "subject of the action" is distinguished from "cause of action" and from "action" and really grows out of the term "subject-matter of the action." (See 37 Cyc. 343.)

In McAndrews v. Chicago, etc., Ry., 162 Fed. 856-860, the Circuit Court of Appeals of the Seventh Circuit said, at page 858:

> "The phrase 'cause of action' comprises every fact necessary to the right to the relief prayed for. The 'subject-matter of the action,' in personal injury suits, are the circumstances and facts out of which the cause of action arises. And 'action' is the means that the law has provided to put the cause of action into effect."

In other words, the *subject-matter of the action* is the *circumstances* and *facts* out of which the *cause of action* arises. In this case, the relations of the parties and the wrongs perpetrated upon them.

Speaking of the subject of jurisdiction in Cooper v. Rey-

nolds as Lessee in 10 Wall. 931-2 (77 U. S. 931), per Mr. Justice Miller, said:

> "By jurisdiction over the subject-matter is meant the nature of the cause of action and of the relief sought."

As said by the Supreme Court of Minnesota in the language of Judge Mitchell in Wisconsin v. Torinus et al, 28 Minn. 175:

> "Care must be taken also to distinguish between identity of the subject-matter of litigation and identity of cause of action—a distinction often overlooked. The subject-matter of litigation may be the same, and yet the causes of action entirely different."

The same principle as that embodied in Equity Rule 37 seems to be followed in the codes and taken by them from the old chancery practice.

It is said in 30 Cyc., at page 115:

> "(b) WHEN COMMUNITY OF INTEREST IS IN BOTH SUBJECT OF ACTION AND RELIEF DEMANDED. * * * (1) JOINDER PERMITTED. In this case, and in this case only, among plaintiffs who are not united in interest, a joinder in an action is permitted by the codes.
>
> "(2) ORIGIN OF THE ENACTMENT. Both in its origin and in its present application, this provision of the codes is closely related to the older procedure."

It must be remembered, too, that the formulation of these Equity Rules was done with a view of simplifying procedure.

The question then arises as to why, under this New Rule 37, all parties interested in the *subject of the action*, and in the result thereof, should not, without question, be made parties. In other words, if there is an action pending, growing out of a state of facts in which other parties have an interest, with respect to the same transaction, based upon the same evidence, and in the results of which their interests would be equally affected, they should not be joined as plaintiffs, even though their interests are in a measure distinct. If necessarily joined, the onslaught on the defendant is for the whole, or if the whole be decided in effect with one plaintiff, then the total amount inevitably controls and all are necessary parties.

Even the decisions of the Federal Courts have long tended

toward what is now incorporated in Equity Rule 37. Especially has it been applied to corporate stockholders.

In Minn. v. Nor. Securities Co., 184 U. S. 199 (499) it is said, at page 244:

> "More briefly stated, the case presented by the charges and prayers of the bill is that the state of Minnesota is apprehensive that a majority of the stockholders respectively of the Great Northern Railway Company and of the Northern Pacific Railway Company have combined and made an arrangement, through the organization of a corporation of the state of New Jersey, whereby such a consolidation, or, what is alleged to amount to the same thing, a joint control and management of the Great Northern and Northern Pacific Railway companies, shall be effected as will operate to defeat and overrule the policy of the state in prohibiting the consolidation of parallel and competing lines of railway, and therefore appeals to a court of equity to prevent by injunction the operation and effect of such a combination and arrangement.
>
> "But at once, as we have seen, the court is put upon inquiry whether the parties and persons to be affected by such an injunction are before it.
>
> "The narrative of the bill unquestionably discloses that the parties to be affected by a decision of the controversy are, directly, the state of Minnesota, the Great Northern Railway Company, the Northern Pacific Railway Company, corporations of that state and the Northern Securities Company, a corporation of the state of New Jersey, and, indirectly, the stockholders and bondholders of those corporations and of the numerous railway companies whose lines are alleged to be owned, managed, or controlled by the Great Northern and Northern Pacific Railway companies."

In other words, the stockholders of the corporation were indirectly affected; a majority only of the stockholders of the railway company were before the court as represented by the Northern Sec. Co., but the balance were not, and the court also said at pages 245-46:

> "It is obvious, therefore, that the rights of the minority stockholders of the two railroad companies are not represented by the Northern Securities Company. They have a right to be represented in the controversy by the companies whose stock they hold, and their rights ought not to be affected without a hearing, even if it were conceded that a majority of the stock in such companies, held by a few persons, had assisted in forming some sort of an illegal arrangement."

The rule there applied was thus stated by Mr. Justice Shairas, at page 235:

> "The general rule in equity is that all persons materially interested, either legally or beneficially in the subject-matter of a suit, are to be made parties to it, so that there may be a complete decree, which shall bind them all. By this means the court is enabled to make a complete decree between the parties to prevent future litigation, by taking away the necessity of a multiplicity of suits, and to make it perfectly certain that no injustice is done, either to the parties before it, or to others who are interested in the subject-matter, by a decree which might otherwise be granted upon a partial view only of the real merits. When all the parties are before the court, the whole case may be seen; but it may not, where all the conflicting interests are not brought out upon the pleadings by the original parties thereto. Story, Eq. Pl., sec. 72."

Compare the rule of the Northern Securities case with that we seek to apply here. In that case the subject of the action was the wrongful combination, and the object of the action was to destroy it; in this case the subject of the action is the taxation of the joint assets, and the retaxation of the joint assets and joint privileges, and the object of the action is to prevent it. In each case the individuals have a sort of separate interest, but in both their interests are joint through the association; in the Securities case the stockholders who had taken no part in the wrong were necessary parties because indirectly affected, while in this case the members are indispensable parties because they stand in the exact relation to the subject of the action and the remedy, with the right of liens upon each membership, and are directly affected and controlled by the trial of the merits, whether made for one or many. They are entitled to be jointly heard.

Street on Federal Equity Practice, Sec. 426 (Vol. 1, p. 260) lays down the rule applicable to co-plaintiffs to avoid multiplicity of suits in this language:

> "A court of equity will, in a single suit, take cognizance of a controversy, determine the rights of all the parties, and grant the relief requisite to meet the ends of justice in order to prevent a multiplicity of suits, where a number of persons have separate and individual claims and rights of action against the same party, but all arise from some common cause, are governed by

> the same legal rule, and involve similar facts, and the whole matter may be conveniently settled in one action brought by all these persons uniting as co-plaintiffs."

The principle of joinder here involved is the same as that of ordinary stockholder suits when the stockholders of corporations sue on behalf of themselves and others to prevent the enforcement of state rate statutes, as in Smyth v. Ames, 169 U. S. 464 (819) where the court said, at page 478:

> "In these cases the plaintiffs, stockholders in the corporations, ask a decree enjoining the enforcement of certain rates for transportation upon the ground that the statute prescribing them is repugnant to the Constitution of the United States. Under the principles which in the federal system distinguish cases in law from those in equity, the circuit court of the United States, sitting in equity, can make a comprehensive decree covering the whole ground of controversy and thus avoid the multiplicity of suits that would inevitably arise under the statute."

The same principle is followed in the railway rate cases, and is the common practice.

Of course in those cases the corporations are made parties, but only to protect the individuals against exaction by the public officials of payments or other acts through the corporate entity which would affect the individuals separately; while here the corporation has paid its tax properly, and the complaint is against the similar exaction of the same thing because of the relations in the corporation. No necessity exists for making it a party; but that does not dispense with the *simple truth* that the members are reached, directly instead of indirectly, but upon an indirect plan. The plan is—to figure up the joint property and the joint conditional values of the memberships because of it, and then tax the association for its physical assets, divide the supposed joint value into supposedly segregated values of membership and tax them in form directly. The relation of these members is shown to be much closer and very much more interwoven than those of ordinary stockholders.

Joinder somewhat discretionary to prevent multiplicity.

Now, the general rule undoubtedly is, that where the subject of the action is entirely disconnected, and the rights and

relations of the parties not connected with each other, either in fact or result, there cannot be any joinder to prevent multiplicity of suits.

See Hale v. Allison, 188 U. S. 56 (380).

But even this rule is more or less discretionary with the court, for it is said in the Hale case, at page 390:

> "The subject is discussed at length in I Pomeroy's Equity Jurisprudence, 2d ed., p. 318, secs. 243, et. seq. It is therein shown that the foundation of the jurisdiction or perhaps the earliest exercise of it upon this ground was in so-called 'bills of peace,' where in one class of such bills the suit was brought to establish a general right between a single party and numerous other persons claiming distinct and individual interests; the second class being where the complainant sought to quiet his title and possession of land, and to prevent the bringing of repeated actions of ejectment against him. The ground was that the title could never be finally established by indefinite repetitions of such legal actions. * * * In any case where the facts bring it within the possible jurisdiction of the court, according to the view taken by it in regard to such facts, the decision must depend largely upon the question of the reasonable convenience of the remedy, its effectiveness, and the inadequacy of the remedy at law."

And again (392):

> "Each case, if not brought directly within the principle of some preceding case, must, as we think, be decided upon its merits and upon a survey of the real and substantial convenience of all parties, the adequacy of the legal remedy, the situations of the different parties, the points to be contested and the result which would follow if jurisdiction should be assumed or denied; these various matters being factors to be taken into consideration upon the question of equitable jurisdiction on this ground and whether within reasonable and fair grounds the suit is calculated to be in truth one which will practically prevent a multiplicity of litigation, and will be an actual convenience to all parties, and will not unreasonably overlook or obstruct the material interests of any."

Except as bearing upon discretion, the want of a legal remedy is not to be considered as we understand it.

THE TRIAL COURT DOUBTED THE RIGHT TO TRY THIS AS AN EQUITY CASE; BUT THAT DOUBT, TOO, WAS UNFOUNDED.

It was suggested in the court's memorandum that there was here an adequate remedy at law (Tr., p. 26, f. 36).

It must be remembered that this assessment, if valid, under the laws of Minnesota, creates a personal debt, at least for some purposes, (In re Jefferson, 35 Minn. 215; Bristol v. Co., 177 U. S. 133 (L. Ed. 701); also that the parties who are called upon to pay taxes have no adequate means of protecting themselves against the operation of the system outside of the theory of injunction.

The persons taxed cannot pay in such way as to make it a *payment under protest*, under the rule of Minnesota, *until the element of coercion is reached.*

> Oakland Cemetery Association v. Ramsey County, 98 Minn. 404.

Under the Minnesota Revised Statutes of 1913, Sections 2076-2078, with the notes, it is pointed out that the tax is against the person and not against the property, although the person is taxed on account of the property. Under Section 2078, the sheriff is given authority upon warrants issued by the clerk, to collect the taxes and the penalty, and if they are not paid upon demand the sheriff may distrain sufficient to collect the taxes, penalties and costs.

Section 2079 provides that that procedure shall not deprive any taxpayer of the right to pay under protest, and to bring an action in cases where the remedy is allowed by law. The case we cite from 98 Minn. 404, is cited under that section. The court points out in that case that the *element of coercion* must be found, and that, *in the absence of actual, present and potential compulsion, payment under protest is not sufficient.*

See Statutes in Appendix.

In the case of Falvey v. Board of County Commissioners, 76 Minn. 257, an effort was made to recover back illegal and void real estate taxes paid "under protest" in a case where taxes were due on January 1st, and would become delinquent on June 1st, when a penalty of 10 per cent would be added, and in order to avoid the penalty on the tax for 1895, and to avoid the sale of the property for the nonpayment of the tax of 1894, the plaintiff paid the taxes for both years under protest, but

the court, through Judge Mitchell, held the payments voluntary, saying:

> "The facts alleged do not in law constitute duress or compulsion. The plaintiff had not been, and was in no danger of being, disturbed in his possession. * * * of choice, and not of compulsion. * * * A threat to bring a suit does not constitute duress merely because it will subject the party to costs in case he is beaten. There being no compulsion or coercion the character of the payment was not affected by his protest."

This would be the rule applied on every membership here, if they should pay these taxes. So, it means that taxes interposed without authority, on an unequal basis, must be defended at the risk of all of the penalties that would accrue as to all of the personal property taxes of every one of the individuals, all mixed up in litigation, or a voluntary payment that could never be recovered, on the county's own theory. It means more than this: he might have no defense to the balance and when done he could win on this item but pay much more for penalties on the remainder of his taxes to which he had no defense. The law could not prevent that. So he would lose, in fact, if he won in theory.

The rule of payment under protest is, therefore, similar to a post-mortem remedy for failure to furnish safety appliances; but this furnishes all the more reason why a court should do what our Court of Appeals did in the Santa Fe case, as shown below, in protecting the interests of the taxpayer.

It is also the rule of the Federal courts that voluntary payment cannot be construed as "payment under protest" in tax cases. In Union Pac. R. R. Co. v. Board of County Commissioners, 98 U. S. 541 (L. Ed. 196), this court held that the payment of taxes, under a written protest to the effect that they were illegal and that a suit would be brought to recover them back, without any demand therefor or effort to collect the same, did not make the payment a compulsory one which could be recovered without a statute to that effect.

In that case the treasurer had a warrant in his hands authorizing him to seize the goods of the company to enforce

the collection of the taxes, and the warrant was in the nature of an execution, but Mr. Chief Justice Waite said:

> "As to this class of cases Chief Justice Shaw states the rule in Preston v. Boston, 12 Pick. 14, as follows: 'When, therefore, a party not liable to taxation is called upon peremptorily to pay upon such a warrant and he can save himself and his property in no other way than by paying the illegal demand, he may give notice that he so pays it by duress and not voluntarily, and by showing that he is not liable, recover it back as money had and received.' This, we think, is the true rule, but it falls far short of what is required in this case. No attempt has been made by the treasurer to serve his warrant.

No individual member could afford to take chances on a single default or annual penalty and litigation until the question is settled. If he pays he is deprived of legal protection; if he pays voluntarily before there is a penalty and judgment, with costs, and a threat to levy, it is not "'payment under protest," so as to recover.

This question was clearly settled by the decision in Smyth v. Ames, 169 U. S. 464 (L. Ed. 819), on principle, where Mr. Justice Harlan announced:

> "The adequacy or inadequacy of a remedy at law for the protection of the rights of one entitled upon any ground to invoke the powers of a federal court is not to be conclusive determined by the statutes of the particular state in which suit may be brought. One who is entitled to sue in the federal circuit court may invoke its jurisdiction in equity whenever the established principles and rules of equity permit such a suit in that court; and he cannot be deprived of that right by reason of his being allowed to sue at law in a state court on the same cause of action."

In A. T. & S. Fe Ry. Co. v. Sullivan, County Treasurer, 173 Fed. 456-470(8 C. C. A.), the court said, of a like contention:

> "This proposed remedy is neither as prompt, nor as certain, nor as complete, as the relief which may be granted through this suit in equity."

So far as the Minnesota state practice is concerned, that is impliedly settled by that adopted in case 104 argued herewith.

Relying upon the decision of Hale v. Allinson, 188 U. S. 56, in Ill. Cent. Ry. Co. v. Caffrey et al, 128 Fed. 770, Judge Thayer had under consideration the question of whether a number

of ticket brokers could be joined as defendants in an action by a railway company, and said (at page 774):

> "In Kelly v. Boettcher, 29 C. C. A. 14, 85 Fed. 55, 64, it was said, in substance, that there is no fatal misjoinder of causes of action in a bill of equity when the bill presents a common point of litigation, and the decree made thereon will affect the whole subject-matter and settle the rights of all parties to the suit.
>
> "Looking at the question above proposed from the standpoint of convenience, as may be done, it is manifest that it should be answered in the negative. It is too plain for serious controversy that the conveniences of all parties, including the defendants and the court in which the cases are pending, will be subserved by allowing the actions to proceed against the defendants collectively. * * * The defendants have a common interest in the questions to be litigated, and it is desirable that they should be heard and determined in a single trial."

Now, it will at once be observed that it was not claimed in the Northern Securities case that those not joined had committed a wrong or sought a right; but they were indirectly affected in their interests in the other companies. If a suit were brought here by a single member to declare his, a double, and arbitrary assessment, the court would immediately say: "What about the other 549; are we to try each case separately as if no other trial had been had, or is the decision for the first one, with or without consent of the others, to determine the whole controversy; or should they all be joined together, their joint rights and obligations considered and the whole litigation ended in one suit where all are, not only conveniently, but necessarily involved?"

This would make it perfectly certain that no injustice is done to those before, or those who otherwise would be absent from, the litigation—the actual interlocking rights and obligations here lie at the very foundation of the determination of whether these memberships are taxable property within, or without, the state statutes.

Corporations of this sort are generally regarded in the law, as *alleged in this bill,* to be in the *nature of volutnary associations,"* like churches and fraternal orders, etc., and to *largely partake* of such *membership rights as partners* would have.

See Board of Trade v. Nelson, 162 Ill. 431, 44 N. E. 743.

Evans v. Chamber of Commerce, 86 Minn. 448.

This is because their rights are clearly interwoven and interdependent and of common interest.

The court said in Penny v. Central Coal & Coke Co., 138 Fed. 769-773:

> "Surely it must be conceded that it is a question of common or general interest of many persons composing the congregation of a religious society that a coal mining corporation should, unbidden, come and burrow beneath their house of worship and the graves of their dead, for coal, and cart it away."

g. IT WAS GOOD PRACTICE TO SUE IN THE NAME OF THREE MEMBERS REPRESENTING THEMSELVES AND OTHERS SIMILARLY SITUATED.

All of the members are in the same position except as to residence; each party named as a plaintiff represents a different class in that one respect. That is not material upon jurisdiction (as no doubt existed on jurisdiction except as to the amount in controversy).

1. *There is no question about the state rule* in Minnesota under Section 7674 of the Revised Statutes of 1913, providing:

> "That when the question is one of common or general interest to many persons, or when those who might be made parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all."

The Minnesota court applied this statute to an action brought by a legal voter on behalf of himself and all other voters of the county in the case of Kaufer v. Ford, 100 Minn. 49.

We hardly need suggest, we suppose, that even a court of equity may take advantage of all remedial statutes of the state to simplify its procedure if that should become necessary.

Platt v. Lecocq et al., 158 Fed. 723 (8 C. C. A.).

In the above case the court said:

> "Rights created and remedies provided by the statutes of a state to be pursued in the state courts may be enforced and administered in the national courts, either at law or in equity, as the nature of the rights and remedies may require. 'A party by going into a national court does not lose any right or appropriate rem-

edy of which he might have availed himself in the state courts of the same locality.'" * * *

The court applied this rule as to a state statute of a similar kind in the case of Penny v. Central Coal & Coke Co., 138 Fed. 769-775 (8 C. C. A.).

In Smyth v. Ames, 169 U. S. 466 (819), the court said:

> "The adequacy or inadequacy of a remedy at law for the protection of the rights of one entitled upon any ground to involve the powers of a federal court is not to be conclusively determined by the statutes of the particular state in which suit may be brought. One who is entitled to sue in the federal circuit court may invoke its jurisdiction in equity whenever the established principles and rules of equity permit such a suit in that court, and he cannot be deprived of that right by reason of his being allowed to sue at law in a state court on the same cause of action. It is true that an enlargement of equitable rights arising from the statutes of a state may be administered by the circuit courts of the United States. * * * A party by going into a national court does not, this court has said, lose any right or appropriate remedy of which he might have availed himself in the state courts of the same locality; that the wise policy of the Constitution gives him a choice of tribunals. Davis v. Gray, 83 U. S. 16 Wall, 203, 221 (21:447, 453); Cowley v. Northern Pacific Railroad Co., 159 U. S. 569, 583 (40: 263, 267)."

This of itself would settle the question of parties plaintiff by statute, if there were no other rule; but the rule in equity is the same.

2. *It is undoubtedly the rule, in the courts of equity and especially in the Federal court, that a few plaintiffs, as well as a few defendants, may act in a representative capacity in suits of this nature.*

The parties in question here were all interested in the subject of the action and all interested in the result thereof.

Equity Rule 38 reads as follows:

> "When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole."

Hopkins in his annotation of this rule says it was taken from a New York code, Sec. 448, in affirmance of an old equity principle, and then says:

"The English rule is as follows:

> "'Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorized by the court or a judge to defend in such cause or matter on behalf or for the benefit of all persons so interested.' (Order XVI, Rule 9.)
>
> "'Given a common interest and a common grievance, a representative suit is in order if the relief sought is in its nature beneficial to all whom the plaintiff proposes to represent.' Lord Macnaghten, in Bedford v. Ellis (1901), A. C., 1, 8 * * *."

It is noticeable in these rules, first, that the intention was to find a question of common or general interest to the many persons, and second, to have the number sufficiently large to make it impracticable to have all before the court. Some of the reasons for this rule are given in Smith v. Swormstedt, 16 How. 288 (57 U. S. 942-48):

> "Where the parties interested in the suit are numerous, their rights and liabilities are so subject to change and fluctuation by death or otherwise, that it would not be possible, without very great inconvenience, to make all of them parties, and would oftentimes prevent the prosecution of the suit to a hearing. For convenience, therefore, and to prevent a failure of justice, a court of equity permits a portion of the parties in interest to represent the entire body, and the decree binds all of them the same as if all were before the court. The legal and equitable rights and liabilities of all being before the court by representation, and especially where the subject-matter of the suit is common to all, there can be very little danger but that the interest of all will be properly protected and maintained.
>
> "The case in hand illustrates the propriety and fitness of the rule. There are some fifteen hundred persons represented by the complaints, and over double that number by the defendants. It is manifest that to require all the parties to be brought upon the record, as is required in a suit at law, would amount to a denial of justice. The right might be defeated by objections to parties, from the difficulty of ascertaining them; or if ascertained, from the changes constantly occurring by death or otherwise."

Smith v. Swormstedt, 16 How. 288, involved the disposition of the property and the individual interests in the property of the Methodist Church after it split over the slavery question, about 1844. Mr. Justice Nelson said:

> "The rule is well established that where the parties interested are numerous, and the suit is for an object common to them all, some of the body may maintain a bill on behalf of themselves and of the others; and a bill may also be maintained against a portion of a numerous body of defendants, representing a common interest."

The above decision leaves no room for doubt that a few may be *representative plaintiffs* as well as *representative defendants*. That it is still a live case is evidenced by its citation in the comparatively recent case of Wallace v. Adams, 204. U. S. 415. It is true it is cited there to the matter of defendants, but no attempt is made to overrule or distinguish the case or principle as to the plaintiffs. It is therefore the binding rule of the Federal courts that a few plaintiffs may sue for many; in many cases herein cited, the rule was applied. It is, we had supposed, frequently practiced and without question and our only reason for discussing it so elaborately is that so good a lawyer as Judge Willard was first inclined in this case to hold that a few could not be representative plaintiffs without naming all others, and that was the real reason for amending the complaint to include the specific names.

The court in Watson v. National Life & Trust Co., 162 Fed. 7 (8 C. C. A.), held, first that the joining of several complainants in a bill to secure an accounting of trust funds with others, although their interests were several, where the fund was one in which they all claimed an interest did not render the bill multifarious; second, that where a large number of persons were separately but similarly interested in the trust fund, a bill in equity for an accounting with respect to the fund and for direction as to its administration might be maintained by part of the body in behalf of all. It is interesting to know that *that case* was one wherein the Security Company executed to one complainant a ten-year term policy on payments amounting to $30 a year, and agreed to pay him $300 and a proportion of the fund as earned at the end of ten years.

Speaking on the question of appropriateness of joining of all the plaintiffs, the court, requoting itself, said:

> "There is no fatal misjoinder of causes of action in equity in any bill which presents a common point of

> litigation, the decision of which will affect the whole subject-matter and will settle the rights of all the parties to the suit." * * *
>
> "It is not indispensable that all the parties should have an interest in all the matters contained in the suit. It will be sufficient if each party has an interest in some material matters in the suit, and they are connected with the others."

The court held that the *fund* afforded the point of litigation common to all the complainants. It was claimed in that case that the unnamed similarly situated persons could not become parties by representation, but *the court* said:

> "It is next contended that this is not a case where the unnamed similarly situated persons can appear or become proper parties by representation. There can be no doubt that the complainants who appear by name and set forth their grounds for relief are proper parties, and whether the unnamed persons similarly situated are made so or not does not necessarily arise on the demurrer, which is alone before us for consideration. There, however, can be no doubt that in a case of this kind, where the parties interested are numerous, running, according to the averments of the bill, into thousands, they may, and properly should, be represented by a portion of their number."

The court applied this rule to a church membership in Penny v. Cent. C. & C. Co., 138 Fed. 769 (8 C. C. A.).

The Minnesota court likens the voluntary arrangements of the membership here to those of churches, lodges, etc., in Evans v. Chamber, 86 Minn. 448-453.

h. A CONTENTION, HERE MADE IN GOOD FAITH, IS THAT THE RIGHTS OF THESE PARTIES ARE JOINT AND INSEPARABLE FOR THE PURPOSES OF THIS CASE; THIS CONTENTION ALONE INVOLVES MORE THAN THE JURISDICTIONAL AMOUNT; IT MUST BE DECIDED—THAT ALONE IS SUFFICIENT.

One thing must be kept in mind, the jurisdiction is not dependent upon the amount of the decree when the case is completed else every case decided for the defendant would cease to have jurisdiction when decided, and would not be a bar to another action in another court. The test, therefore, of jurisdiction must depend—not upon the final result of the merits—but upon the *value* of the *controversy*.

The amount alleged in the complaint, and not what the evidence shows, determines the amount in controversy.

In Smithers v. Smith, 204 U. S. 633 (L. ed. 656), it was held that where a *question was before the court as to whether or not it was a joint matter, that the court had to determine that matter, and that that* determination was really upon the merits of the controversy. The court saying at page 646 (661):

> "The error into which the judge in the court below has fallen is shown by an analysis of his findings. He did not find that the land which the plaintiff claimed to recover was not a value in excess of $2.000, but that parts of that land which each defendant claimed that the plaintiff ought only to recover against him were each of less than the value of $2.000. As the plaintiff alleged, and the defendants denied, that the defendants jointly took and held his whole lot of land, the judge, on the conceded value of plaintiff's land, in order to have arrived at the conclusion that the case should be dismissed, must have found that the defendants had not jointly taken and held the whole of the plaintiff's land. In doing this we think he exceeded his authority under the statute, and, in determining the jurisdiction, in effect decided the controversy between the parties upon the merits. In deciding that the defendants had not acted jointly, as the plaintiff alleged and the defendants denied, he determined not a jurisdictional fact, but an essential element of the merits of the dispute upon which the parties were at issue."

And on page 645 (661):

> "We know of no case that holds that in such a situation the judge of the circuit court is authorized to interpose and try a sufficient part of the controversy between the parties to satisfy himself that the plaintiff ought to recover less than the jurisdictional amount, and to conclude, therefore, that the real controversy between the parties is concerning a subject of less than the jurisdictional value, and we think that, by sound principle, he is forbidden to do so."

The court held to the rule in the Smith case, that the allegations of the value in the complaint determined the jurisdiction, unless upon the face of the pleadings it was not legally possible to recover, or where the allegations were made fraudulently to create jurisdiction. The lower court in that case held that there had been such fraud and the Supreme Court reversed it.

Now in the case at bar it is claimed that all of these proceedings were joint; that the whole subject was treated as one matter and was one controversy; that the interests in the matter are based upon joint relations, and the court had to decide that question of fact upon the merits; that joinder it had to assume as correct in the decree which was rendered; the question of joinder alone gave jurisdiction, under the above case—certainly none can question the sincerity of the claim to joinder, and that makes a sufficient controversy.

The same rule, when the jurisdictional facts appear upon the face of the complaint, has long existed.

In City R. R. Co. v. Citizens Street R. R. Co., 166 U. S. 557 (561), Mr. Justice Brown said:

> "It should be borne in mind in this connection that jurisdiction dependent upon the allegations of the bill, and not upon the facts as they subsequently turned out to be."

In the case of So. Pac. Ry. Co. v. Calif., 118 U. S. 109 (L. ed. 103), the court said:

> "The right of removal does not depend upon the validity of the claim set up under the constitution or laws. It is enough if the claim involves a real and substantial dispute or controversy in the suit."
> (See 227 U. S. 412.)

The test of a "Federal Question" is well put, in St. P., M. & M. Ry. v. St. P. & N. P. R. R. Co., 68 Fed. 2, wherein Judge Thayer says:

> "If, on the face of the complaint or declaration, the case is one which the court has the power to hear and determine, because of the existence of a federal question, it has the right to decide every issue that may subsequently be raised, and whether the decision of the case ultimately turns on a question of federal, local or general law is a matter that in no wise affects the jurisdiction of the court."

The matter involved, then, included the contention that the rights were joint; that the action was necessarily brought jointly because of the peculiar contractual relations controlling the membership rights upon which each membership was claimed to be outside of the taxing statute—*that was the most important question for decision in the case, on the merits, out-*

side of the constitutional questions. Smithers v. Smith, supra, would seem to settle the jurisdiction by this point alone.

In Green Co. v. Thomas, Executors, 211 U. S. 596 (L. Ed. 343), the court had under consideration certain Railway Aid bonds. There were two cases, one at page 579. In the one case there were several plaintiffs, including three corporations. This court said:

> "In the petition they alleged that they were 'jointly the owners and holders' of sixty-seven bonds, whose aggregate face value exceeded the jurisdictional amount."

This court also said:

> "The defendants' answer denied that the plaintiffs were 'jointly the owners or holders' of the bonds."

The answers to certain interrogatories of the defendants' answer disclosed that the railway company had given the bonds in secret to the Indianapolis Rolling Mill Company, in payment for iron furnished to that company to build the railway through Greene County. The Mill Company turned those bonds over to its stockholders as dividends, with the agreement that they should own those bonds in certain undivided interest, and it was stated that each should own an undivided interest in all the bonds.

It seems to be the well settled rule that a claim which involves more than the jurisdictional amount, if made in good faith, puts in litigation the proper amount, irrespective of what the result on the merits is, and even though a valid defense is apparent on the face of the petition,—the defense may never be made. This is evident from the nature of the test. In such cases in general, and this in particular, fictitious claims are not to be tolerated to give the Federal jurisdiction, but the case is so close to the line in a controversy like this that none can safely say in advance that the amounts can or cannot be aggregated. Besides, it is even a matter in which this court recognizes liberality. It was settled by Bowman v. Chicago & N. W. R. Co., 115 U. S. 611 (L. Ed. 502) and restated in Schunk v. Moline, Milburn & Stoddart Co., 147 U. S. 500 (L. Ed. 255) that

> "No mere pretense as to amount in dispute will avail to create jurisdiction,"

such as raising the amount of damages really claimed from below, to above, the jurisdictional amount to enable Federal jurisdiction to be acquired.

But that is not the sort of a case we have here where there can be no question as to the gross amount involved, or that it exceeds the jurisdiction whether the test be as to the second taxation of the land, the combined, intentional or actual relationship of the members, the proceedings for procuring and denying of assessments, or the question of whether their ownership in equity is a joint or conditional one, or the question of whether they should be joined or treated separately. If any of these things are controlling, then the amount is ample. If, upon the other hand, it be held that the taxes are assessed individually because of these things and the wrongful desire of defendants to arbitrarily affect their joint interests, the amount is still sufficient. If none of these is held to be the real test of the amount in controversy, then it can only be said that the plaintiffs made the claims in good faith and that their invalidity did not deprive the court of jurisdiction. The good faith is evident not alone from this case, but from the fact that in case No. 104, to be argued herewith, the same practice was followed without objection as to joinder, in the state court.

What, then, is the amount in controversy?

It is evident that it is not the amount of recovery, otherwise every case with a successful defense would automatically fail in jurisdiction; it is evident that it must be a controversy in good faith, else that would be a fraud on the court; it is likewise evident that it may be a case where the claim is made in good faith as to amount of joinder and involve the necessary amount by reason thereof.

Take this case. Each membership is conditionally worth to exceed $3,000.00 aside from interest and costs; the property owned jointly and conditionally in equity is about $1,000,000; the total tax exceeds $20,000; the right of a lien which each membership has upon each of the others is to the full value; the limitations which each member has upon every other, and which each has upon his, are all involved. No member can force another to pay such tax, therefore he loses his right to

a lien and interests in that membership; but each is interested in whether he owns a membership contingently so as to make it property at all in the legal sense; he is interested in whether all these memberships are taxable so as to reach the joint assets; he is interested in whether they can all be taxed as a class by arbitrarily singling these out and imposing the tax as if it were an individual matter, by doing it as a joint matter to vent a dissatisfaction because of some legislative act foreign to such members; he is interested in knowing whether his, is taxable, property at all; he is interested in knowing whether his membership is so restricted in fact as to prevent its absolute ownership because of the joint restrictions and so segregated in law as to prevent its joint protection.

Besides, it is alleged:

> "That said questions of joinder each involves an amount in excess of $3,000 in value over and above interest and costs."

In other words, all of the steps in the various alleged wrongs in the taxation and all of the claims as to ownership and the nature of the joinder claimed, are, as is immediately evident, justified as legitimate rights to be litigated—they are not frivilous, or well settled as to this sort of a case. It is therefore a legitimate claim of joinder on the one hand, of non-joinder upon the other. The joinder itself would be an issue if there were an answer to deny it. As it is, we think the allegation is admitted and controlling.

The amount here is really a single amount, nominally against the several members. But those members have but these memberships, only conditionally owned, and do not, so long as the concern is a going concern, own segregated interests in the corporation or association except in equity.

Whatever value, contingent or otherwise, that comes from the corporate property is not segregated value—is not a legal value at all, but only an equitable value based on the theory that in equity the members will own the corporation when it comes to a dissolution. This means that for the present the interests are joint; the conditional ownership is joint; the tax must be upon a joint property. It was so treated in the

levy by the assessor and by the Board of Equalization; it is so in *fact* and should be so treated in equity.

The language of this court in Berryman v. Trustees, 222 U. S. 333 (L. Ed. 229), is very apt:

> "Measuring the contention as to the absence of the jurisdictional sum by the principles thus established, it answers itself, since the argument is equivalent to saying that a subject which is necessarily included in the relief to be granted, and is, in the nature of things, concluded by the decree to be rendered, is yet excluded from consideration for the purpose of the issues in the cause,—that is, may not be taken into account in ascertaining whether there is jurisdiction over the controversy."

CONCLUSION.

We conclude, therefore, that jurisdictional amount is involved by the necessary effect upon the several contentions to be concluded by the decisions, as follows:

a. The joint assessment, with its individual form, involves $21,323.50 for the one year with a threat of annual taxation.

b. The inter-corporate relations, and their consequent joint equitable claims upon the corporate assets of several hundreds of thousands of dollars in value must necessarily be decided.

c. The plaintiffs are not individually bound to allow their memberships to remain unprotected simply because the annual individual tax was comparatively small.

d. The whole amount involved for all is necessarily controlled by the decision of the first membership, and the effect of the precedent in such a public matter.

e. Every member is an indispensable party by reason of the direct and indirect effect upon his interests.

f. It is good practice for a few to sue for all and as all were indispensable parties the whole amount was involved.

g. The inter-relations of the members, with their liens upon the other memberships, give each a special interest in each membership and the right to join in its protection.

h. One of the chief contentions is that these members are jointly interested in equity contingently in the memberships and in the corporate assets; this question of joint interests is

fundamental in their relations and in the taxability; whether there is such a joinder involves more than the jurisdictional amount.

i. The re-taxation of the memberships to reach the improper corporate taxation a second time of $5,500.00 per year for five or six years back.

Dated October 18, 1915.

Respectfully submitted,

H V Mercer

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Minneapolis, Minn.

APPENDIX.

Minnesota Revised Statutes 1913, Sections 2076, 2077, 2078, 2079.

DELINQUENT PERSONAL PROPERTY TAXES.

2076. When delinquent—Penalty—All unpaid personal property taxes shall be deemed delinquent on March 1 next after they become due, and thereupon a penalty of ten per cent shall attach and be charged upon all such taxes. (888)

2077. Treasurer to file delinquent list in court—Answer—Trial—On the fifth secular day of April of each year the county treasurer shall make a list of all personal property taxes remaining delinquent April 1, and shall immediately certify to and file the same with the clerk of the district court of his county, and upon such filing the list shall be prima facie evidence that all the provisions of law in relation to the assessment and levy of such taxes have been compiled with. On or before the tenth secular day next thereafter, any person whose name is embraced in such list may file with the clerk an answer, verified as pleadings in civil actions, setting forth his defense or objection to the tax or penalty against him. The answer need not be in any particular form, but shall clearly refer to the tax or penalty intended, and set forth in concise language the facts constituting his defense or objection to such tax or penalty. The issues raised by such answer shall stand for trial at any term of court in such county in session when the time to file answers shall expire, or at the next general or special term appointed to be held within thirty days thereafter, then the same shall be brought to trial at any general term appointed to be held within the judicial district, upon ten days' notice. The county attorney of the county within which such taxes are levied, or, if there be none, of the county within which such proceedings are instituted, shall prosecute the same. At the term at which such proceedings come on for trial, they shall take precedence of all other business before the court. The court shall without delay and summarily hear and determine the objections or defences made by the answers, and at the same term direct judgment accordingly, and in the trial shall disregard all technicalities and matters of form not affecting the substantial merits. If the taxes and penalties shall be sustained, the judgment shall include costs. (889)

2078. Distress and sale—Upon the fifteenth secular day of April next after the filing of such list the said clerk shall issue his warrants to the sheriff of the county as to all the taxes and penalties embraced in the list, except those to which answer has been filed, directing him to proceed to collect the same. If such taxes are not paid upon demand, the sheriff shall distrain sufficient goods and chattels belonging to the person charged with such taxes, if found within the county, to pay the same, with the said penalty of ten per cent and all accruing costs, together with twenty-five cents from

each delinquent, as compensation to said clerk. Immediately after making distress, the sheriff shall give at least ten days' posted notice in the town or district where the property is taken, stating that the property, or so much thereof as will be sufficient to pay the taxes for which it is distrained, with penalty and costs of distress and sale, will be sold at public vendue at a place and time therein designated, which time shall not be less than ten days after such taking. If such taxes and penalties and accrued costs are not paid before the day designated, the sheriff or his deupty shall proceed to sell the property pursuant to the notice. (890)

2079. **Payment under protest**—Sections 2076-2078 shall not deprive any taxpayer of the right to pay under protest any tax claimed to be unjust or illegal, and to bring an action for the recovery of the same in any case where such remedy is now allowed by law. (891)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 411.

GEORGE D. ROGERS, A. L. GOETZMAN AND E. E. CRANDALL, REPRESENTING THEMSELVES AND OTHERS SIMILARLY SITUATED, APPELLANTS,

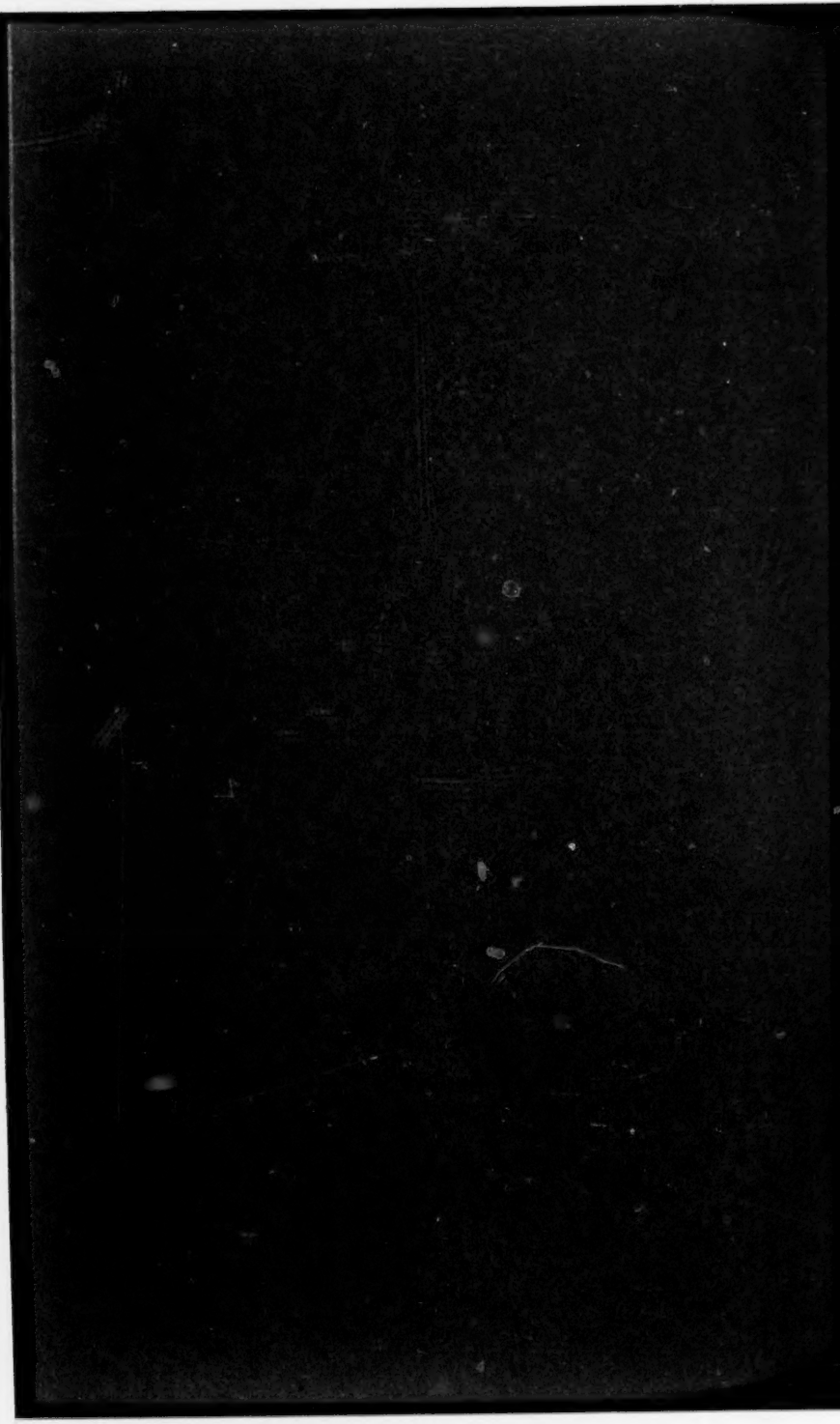
vs.

THE COUNTY OF HENNEPIN ET AL., APPELLEES.

APPEALED FROM THE DISTRICT COURT OF THE STATE OF MINNESOTA.

REPLY BRIEF OF APPELLANTS.

H. V. MERRICK,
Counsel for Appellants.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 411.

GEORGE D. ROGERS, FRANK E. CRANDALL ET AL.,
APPELLANTS,

vs.

THE COUNTY OF HENNEPIN ET AL., APPELLEES.

REPLY BRIEF.

We tried to make it plain in Brief of Plaintiffs in Error, pages 9-13:

1. That we recognized the two distinctive rules as to aggregation of amounts.

2. That the assessment and equalization were matters that were "action judicial" in their nature and placed the plaintiffs in position to attack them as a joint wrong, within the rules given in our original brief, pages 28-45.

3. We set out, there, other grounds necessarily involved in the decision and fundamental to its determination within

the rules given in our brief and particularly those given on page 60.

4. That the nature of findings within this complaint, as suggested at pages 19-20 of our original brief, shows that there was no such certainty of want of jurisdiction as is needed under the rules on pages 13-15 of our brief.

Notwithstanding this situation, we find counsel evading meeting many of the main principles upon which we rely and attempting to dispose of the case upon the theory following:

1. A moot case.

2. That the court need not decide the nature of the property, and therefore cases of disconnected ownership control.

I.

This is not a moot case. We suppose, of course, that it requires more than a moot case to be of avail to appellants, but it is not essential that a perfect case be made out for there may be no defense. See Brief of Plaintiffs in Error, pages 14-15. Undoubtedly a decision sustained upon grounds needing no Federal questions may not leave room for more than a moot case. Leanard *vs.* Vicksburg, 198 U. S., 416.

But this is not such a case. Mr. Justice Brewer sums up the general rule in Lewis *vs.* Monson, 151 U. S., 545 (cited by counsel), in this language:

> "The determination of any questions affecting them (taxes) is a matter primarily belonging to the courts of the State, and the national tribunals universally follow their rulings except in cases where it is claimed that some right protected by the Federal Constitution has been involved."

This rule must be taken with the further applicable facts hereinafter argued.

Of course, we cannot argue the merits on this matter, but only suggest enough to show that it is not a moot case.

The following questions are in this case for decision that are of a Federal nature and have not been foreclosed, and cannot be foreclosed by a State decision, so as to bind a Federal court:

1. Is there any statutory authority in Minnesota for valuing memberships like these so as to allow them to be assessed as general personal property upon a legislative foundation that furnishes due process of law?

2. Is it a taking of the property of these members against the due process protected by the Fourteenth Amendment to allow the defendants to again proceed to take $25,000 out of these plaintiffs as one joint assessment after having once wrongfully gotten it out of the corporation for excessive assessments?

3. Can the defendants deny the right to litigate the joint relation of the plaintiffs so as to protect their liens and interlocking relationships without denying Federal rights?

4. Is there a violation of the equal protection clause of the Fourteenth Amendment in assessing the assets of such corporations twice without express statutory authority when no other corporate assets are twice assessed?

5. Is it a violation of the equality clause to segregate out of a class these particular memberships and assess them while all others go unassessed except Duluth, and their assessment be on only the amount above the assets?

In addition to these the record of the Duluth case as evidenced by the opinion shows (Tr. in 104, p. 9), that the

facts of that assessment and record differed from ours in this complaint in the things shown on pages 44 of the Brief of Plaintiffs in Error in Number 104 argued herewith.

The case of State *vs.* McPhail, which will doubtless be claimed as a binding precedent, will be distinguished from this on the facts; it was absolutely devoid of the element of double assessment, for no attempt was made to reach the memberships there except to cover their value above what had already been taxed to the corporation; while under the former case, as to these members, the complaint points out that the $3,500 tax was put on just as if there had been no taxation, and in the case at bar the $1,100 was to the extent of one-half double taxation. There cannot, therefore, on the showing, or in fact, be claimed, that the issues were identical in principle, either upon the facts or the law so as to preclude the decision of this case, if the other case had been finally decided.

The appeal in that case was a matter of right of which no court could deprive the parties.

> Empire State Surety Co. *vs.* Carroll County, 194 Fed., 593-609 (8 C. C. A.).
>
> McCourt *et al. vs.* Singers-Bigger, 150 Fed., 102 (8 C. C. A.).

Nor was this a mere attempt to override State decisions by the Federal courts for any improper motive. The plaintiffs were confronted with a situation where a new tax was about to be spread upon the records; where they had waited in vain for the other decision which they thought might throw some light upon the questions and determine that the memberships were not taxable according to the theory of Duluth, or under the theory of "moneys and credits," and did not believe that any State court would act upon the matter while the decision was awaited in the Supreme Court of the State. Also it was generally understood that if there should be an adverse decision on the part of the State court in either of

those cases that this court would be called upon to pass upon the matter of the Federal questions. Besides this, the first action was brought before it was known that threats would be made to tax upon this theory for 1913, or future years, or to tax upon this theory for 1913, or that an attempt would be made to tax the memberships upon this theory, or any other theory, for past years to cover the same supposed value of privileges or memberships that had already been taxed by excessive taxation of the real estate. Those things were unknown, could not have been anticipated, and were not expected to be threatened when the former suits were started. Under these circumstances there is nothing to prevent the pendency of these actions to determine their respective issues in this court or even in a Minnesota court upon the merits at the same time, so far as we can view it.

See Hunt *vs.* New York Cotton Exchange, 205 U. S., 322.

Merritt *vs.* American Steel Barge Co., 79 Fed., 228 (8 C. C. A.).

In the Hunt case this court said:

> "The pendency of a suit in the State court does not deprive a Federal court of jurisdiction."

In the Merritt case this court requoted from itself in the case of Standley *vs.* Roberts, 59 Fed., 836, to show that where one court had jurisdiction of property in the course of litigation, no co-ordinate court could deprive it thereof, but further said:

> "It is equally well-settled that the pendency of an action in one court will not bar or abate another action between the same parties, involving the same issues, in a court of co-ordinate jurisdiction, in which that jurisdiction is exercised, not by the seizure of the property, but by personal service of original process upon the defendant."

II.

Aggregation of Amounts.

We do not claim that the facts in the Berryman case are identical. The record shows that the Chamber was organized under chapter 138 of the General Laws of Minnesota for 1883 (Tr., p. 2, f. 4); so far as we are able to find there was then no provision of law in that act or elsewhere placing any limit upon its life.

The point in such cases as Holt *vs.* Ind. Mfg. Co., 176 U. S., 68, from which counsel quote page 28, is that a few enumerated years were all that was involved, while in this case a single year with threats for the future and threats to retax to make a second taxation already wrongfully gotten on the buildings and which would amount to $25,000 to $30,000; also the assessment, the equalization, the proceedings before the tax Commission were all as a joint matter; the question of double taxation is a joint matter.

Notwithstanding this, however, this point of aggregation as to single individuals does not now strike us as strong as it did at first; counsel probably see this by a cross-sectional view of our whole argument. Therefore, they would be willing to avoid the consideration of the questions designated in our Original Brief, pages 9-13; 13-17; 35-44; 16-17.

In fact the whole remainder of our brief, and especially page 60, should be carefully considered, notwithstanding the nature of the answer brief.

Respectfully submitted,

H. V. MERCER,
Counsel for Appellants, Minneapolis.

December 5, 1915.

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Supreme Court of the United States.

OCTOBER TERM, 1915.

No. 411.

GEORGE D. ROGERS, FRANK E. CRANDALL, et al.,
Appellants,

vs.

THE COUNTY OF HENNEPIN, HENRY C. HANKE, AS ITS COUNTY TREASURER AND INDIVIDUALLY, AND AL. P. ERICKSON, AS COUNTY AUDITOR AND INDIVIDUALLY,
Appellees.

Appeal from the District Court of the United States for the District of Minnesota.

BRIEF FOR APPELLEES.

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SUBJECT INDEX.

CASES CITED.

Supreme Court of the United States.

OCTOBER TERM, 1915.

No. 411.

GEORGE D. ROGERS, FRANK E. CRANDALL, et al.,
Appellants,

vs.

THE COUNTY OF HENNEPIN, HENRY C. HANKE, AS ITS COUNTY TREASURER AND INDIVIDUALLY, AND AL. P. ERICKSON, AS COUNTY AUDITOR AND INDIVIDUALLY,
Appellees.

BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

This is an action that was commenced in the U. S. District Court for the District of Minnesota for a tem-

porary and permanent injunction to restrain the appellees from enforcing the collection of taxes assessed against each individual appellant because of his ownership of a membership in the Minneapolis Chamber of Commerce, and to cancel and set aside such taxes.

This action was commenced on December 31, 1913, and involved said personal property taxes that had been assessed in the year 1913, and which became due and payable on the first of January, 1914. The amount of said taxes against each plaintiff was $38.77.

The defendants in said action (the appellees here), in response to the order to show cause why a temporary injunction should not be issued, moved the court to dismiss the action and discharge said order because the amount in controversy in the action was less than $3,000, and no plaintiff had an interest involving a sum in excess of $40. (Tr. of Record, Page 21, Folio 27.)

This motion was heard on January 3 and on January 15, 1914; and on February 18, 1914, said court rendered a decision dismissing the bill with costs and discharging the order to show cause. (Tr. of Record, Pages 24 and 26.)

The plaintiffs then appealed from that order to the Circuit Court of Appeals, but the latter court decided that the action had been dismissed because of lack of jurisdiction of the trial court; and therefore the order was not appealable to the Circuit Court of Appeals, as the appeal should have been taken, if at all, to this Supreme Court of the United States. (220 Fed. Reporter, 453.)

This appeal raises the sole question of whether the District Court of the United States for the District of Minnesota had jurisdiction in this case. The appellees contend that the amount in controversy does not exceed $3,000 and that said Federal Court therefore had no jurisdiction. The appellants in their Brief (Page 2) concede this to be the only question.

BRIEF AND ARGUMENT FOR APPELLEES.

I.

THIS ACTION IS NOW A MOOT CASE AND IS NOT ENTITLED TO CONSIDERATION BY THIS COURT.

This action was brought by the plaintiffs solely for the purpose of determining whether memberships in the Minneapolis Chamber of Commerce were taxable property under the statutes of Minnesota. This conclusively appears in Paragraph 2 of the Bill of Complaint. (Tr. of Record, Page 2.)

At the time this action was commenced, the action involving the taxation of said memberships for the previous year, viz: 1912, had just been argued and submitted to the Supreme Court of Minnesota. (See Tr. of Record in No. 104 submitted herewith.) But said action had not then been decided by said State court.

After this case at bar had been argued and submitted in the Federal Court in Minneapolis, the Minnesota Supreme Court filed its opinions in the two cases involving the taxation of such memberships for the previous year.

The highest State Court in Minnesota has therefore held that such memberships are taxable property and that they may be taxed under the Minnesota statutes to the individual members. This construction of the

Minnesota statutes is necessarily binding upon the Federal Court sitting within that jurisdiction.

Lewis v. Monson, 151 U. S. 545.

Dundee Mortgage Trust Investment Co. v. School District, 10 Sawy. 52, 19 Fed. 359.

Authorities on this point might be cited almost indefinitely even if the decision of the State Court is rendered after the action has been commenced in the Federal Court, but before final judgment is rendered in the Federal Court action, the latter court should follow the State Court.

Western Union Telegraph Company v. Poe, 64 Fed. 9 (Opinion by Taft, J.).

Sandford v. Poe, 16 C. C. A. 305, 37 U. S. App. 378, 69 Fed. 546 (Opinion by Lurton, J.).

In *Columbus Southern Railway v. Wright*, 151 *U. S.* 470, this Court had before it a case much similar to the one at bar. It was a suit for an injunction to restrain the collection of tax, the validity of which had been sustained by the Supreme Court of Georgia. The plaintiffs in error claimed that they had thereby been denied the equal protection of the laws of that state. A demurrer to the complaint had been sustained by the State courts and the case was brought to this court on a writ of error and this court said (Page 475):

> "Upon this writ of error we cannot, of course, review the construction which the Supreme Court of the State has placed upon its own Constitution and the act in question."

In *Games v. Dunn*, 14 *Peters* 322, it was said that laws taxing property are strictly local in their character and that their construction by the State courts should be followed by the courts of the United States with equal, if not greater, strictness than any other class of laws.

> "The construction of a State statute by the Supreme Court of the State involving no question under the laws or Constitution of the United States is conclusive upon us. We accept the construction of State statutes by the State courts, although we may doubt the correctness of such construction. We accept and adopt it, although we may have already accepted and adopted a different construction of a similar statute of another State, in deference to the Supreme Court of that State."
>
> *Erie Ry. Co. v. Penn.*, 21 *Wall.* 492, 497.

See also—

> *Bailey v. Magwire*, 22 *Wall* 215.
>
> *Brown-Forman Co. v. Ky.*, 217 *U. S.* 563.

> "The decision of the highest State Court upon the construction to be placed upon the Statute of that State is one this Court is bound to respect."
>
> *Adams v. Nashville*, 95 *U. S.* 19.

> "Even if this Court doubted the wisdom of the State decision, the latter would be regarded as free from error and binding on this Court."
>
> *Lane Co. v. Oregon*, 7 *Wall* 71.

> "Whether the tax is in accordance with the laws of the State is a question on which the decision of the highest court of the State is conclusive. The

only question of which this Court has jurisdiction is whether the tax was in violation of the Federal Constitution."

Pullman Car Co. v. Pa. 141 *U. S.* 18.

See also—

Central Pacific Railroad v. Nevada, 162 *U. S.* 512.

Stryker v. Goodnow, 123 *U. S.* 527, 538.

In *Horn Silver Mining Company v. New York,* 143 *U. S.* 305, an attempt was made to have this court consider the decision of a state court holding that New York might assess a tax against the whole capital stock of a foreign corporation which was engaged chiefly in mining operations in another state and doing only a small part of its business in New York. This court held that even though such taxation resulted in apparent hardship, the case was one that presented no Federal question and was neither the taking of property without due process of law nor was it a denial of equal protection of the law.

Minnesota Statutes and the decisions of her Supreme Court construing and applying them have been before this court on other occasions and this same rule has been applied.

In *Winona & St. Peter Land Company v. Minnesota,* 159 *U. S.* 526, it is said:

"That the tax proceedings were in substantial conformity with the provisions of the Minnesota Statutes and that there is nothing in those Statutes

> in conflict with the State Constitution, is settled for this Court adversely to the plaintiff in error by the decision of the Supreme Court of the State."

See also to the same effect—

U. S. Express Company v. Minnesota, 223 *U. S.* 335.

Therefore, it having been determined that the assessment against these plaintiffs was valid and that there was no illegal taxation, it is immaterial whether the Federal Court in Minneapolis had jurisdiction of this action or not.

II.

THE DISMISSING OF THIS ACTION ON THE GROUND THAT NO PLAINTIFF HAD AN INTEREST IN EXCESS OF $40 AND THAT THE PLAINTIFFS COULD NOT AGGREGATE THEIR CLAIMS FOR THE PURPOSE OF CONFERRING JURISDICTION UPON THE COURT WAS NOT ERROR.

The plaintiffs in Paragraph 2 of their Bill of Complaint (Tr. of Record, Page 2) allege as their grounds of equitable jurisdiction, and particularly of the Federal Court, that the State of Minnesota through its taxing officers was endeavoring to collect a tax from *each of the individual plaintiffs.* This is the language of that portion of the Bill of Complaint found on Page 2 of the Transcript of Record, reading as follows:

> "(c). That the jurisdiction as to the equity side of the court depends upon the matters above stated and the further prevention of a multiplicity of suits and defenses wherein, out of the same transaction, 550 suits and defenses by as many different in-

dividual plaintiffs or defendants would be required to settle the questions in controversy, while under this method the whole question can be settled in this one action; that said defendants are about to enter upon the records of said County, assessments upon the memberships in said corporation, to become individual claims against each of said 550 members, which assessments were made by the taxing officers of the State without warrant of state law, either valid or invalid; that the enforcement of the said attempted assessments is now in the hands of the above named defendants and they are demanding payment thereof from the individual plaintiffs in advance of the time when the payments would ordinarily be due if valid, and threatening their enforcement as if valid, and that there is no adequate remedy at law for the plaintiffs, all of the facts of which jurisdictional and equitable matters more fully appear hereinafter."

The foregoing is the only claim of the plaintiffs to Federal equitable jurisdiction.

In Paragraph 10 of the Bill of Complaint (Tr. of Record Page 6), it is alleged—

> "that they (said memberships) were so assessed for 1913 as personal property without any warrant of statutory or other law, and individual claims are thus attempted to be created at $38.77 irrespective of their residence."

The question now for consideration is not whether these plaintiffs had any adequate remedy of law nor whether this action would prevent a multiplicity of suits, nor whether they would be entitled to equitable relief in a court of general equity jurisdiction, but solely whether the amount of their claims can be aggregated

for the purpose of conferring jurisdiction on the Federal Court.

Appellants by somewhat vague and laborious argument insist that the "inter-relationship" of these memberships or of the members is so complex and so marvelously different than that of the share-holders in any other organization or institution that the existing rules of law utterly fail here.

Neither this court nor these appellees are at all concerned with what may be the rights of these members *inter se* nor as to how they may agree among themselves that they will recognize transfers of their memberships. The rules which they make concerning such transfers are as easily amended today or tomorrow as they were easily enacted yesterday.

One member cannot possibly be directly interested in the personal property tax that some other member has to pay on his membership. Each member is interested solely in the tax which may be imposed against him personally because of his ownership of taxable property; to-wit, a membership.

The only possible interest that these members could have in common would be the interest that has apparently drawn them together in this action, viz: To have the law construed to the effect that memberships are not taxable.

The members are not litigating or contesting against a tax that has been imposed upon the corporation. They are objecting to the tax that has been imposed on each one of them as an individual.

The action has not been brought in the name of the Chamber of Commerce of Minneapolis in its corporate capacity. It has not been brought by the stockholders claiming to represent the corporation. It has been brought by individuals—on behalf of individuals

Each member in the Chamber of Commerce is assessed individually for his personal property taxes. The assessment is against the person and not against the property. The person is taxed on account of his ownership of the property, and the value of the property determines the amount of the tax, but the liability is purely personal; consequently the proceedings for the collection of delinquent personal property taxes are in personam.

Clark v. Stearns County, 47 Minn. 552.

State v. Red River Valley Elevator Co., 69 Minn. 131.

Laird v. Pine County, 72 Minn. 409.

State v. Eberhard, 90 Minn. 120.

There is no more connection between the assessments made against two persons because of their ownership of memberships in the Chamber of Commerce than there is between the assessments made against said same persons for their ownership of their respective household effects, or their respective automobiles. The fact that the law which may be settled by the litigation of one member, will affect the rights of another member, will not of itself justify the litigating member in assuming to act on behalf of all other citizens who might be so

affected. One member might desire to pay his taxes whether he had a technical defense or not. This proposition is well stated in *Dupage County v. Jenks*, 165 *Ill., on page* 281.

> "It may be and is, no doubt true that many of the citizens of these towns felt themselves under at least a moral obligation to lend the necessary support to the state, county, town and municipal governments under which they live and by which they were protected in their persons and property, and were willing to waive any irregularities that may have intervened in levying these taxes. They no doubt felt the duty they owed to support the state and county governments by paying these taxes.
>
> Each individual has no doubt the legal right where a tax has been imposed upon him that he conceives to be illegal to contest its validity, but we are at a loss to comprehend how he thereby acquires the right to determine that his neighbor shall not pay a tax similarly imposed upon him. Each individual tax is a separate and distinct burden and stands wholly disconnected from that of other persons."

In *Sioux Falls National Bank v. Swenson*, 48 *Federal Reporter*, 621, the action was prosecuted by the bank in its own behalf and for its individual stockholders to enjoin the collection of a tax assessed against the capital stock, and also against the shares of stock as the property of the stockholders; and it was held that the rights of the plaintiffs involved were separate and distinct, and the jurisdictional amount must be determined by the amount of the tax against any one complainant and not by the aggregate tax against all of them.

Smithson v. Hubbell, 81 *Fed. Reporter,* 594, was a suit by a creditor of an insolvent National Bank in behalf of himself, and all other creditors, to enjoin the Receiver and the Controller from paying dividends on an alleged fraudulent claim which had been allowed by them. It was held that the jurisdictional amount was to be determined solely by the amount of complainant's own claim and not by the aggregate of all of the claims of those whom he assumes to represent.

Whelas v. City of St. Louis, 180 *U. S.* 379, affirming 96 *Fed. Reporter,* 865, is the case relied upon by the trial court as determinative of the question of jurisdictional amount.

The facts of this case are as follows: Several property holders owning separate lots abutting streets which the Board of Public Improvements of the City of St. Louis had decided to improve, joined in a bill to restrain the City of St. Louis and the president of the Board of Improvements of said city from making an assessment and levying the same against the abutting property. None of the complainants was liable to be assessed for an amount equal to $2,000. The total amount of all the assessments against all of the complainants greatly exceeded $2,000. In this case as in the case at bar the complainants urged that the determination of the question as to whether or not this tax or charge was the taking of property without due process of law and against the 14th amendment would affect all the complainants equally. The court considered that conten-

tion not sound. In the course of its opinion the Circuit Court said:

> "The question is whether this court has jurisdiction to hear and determine this controversy. This question has received the consideration of the Supreme Court of the United States in many cases and as a result of them all, the following proposition may be considered as settled. 'If several persons be joined in a suit of equity * * *and have a common and undivided interest, though separable as between themselves, the amount of their joint claim or liability will be the test of jurisdiction. But where their interests are distinct, and they are joined for the sake of convenience only, and because they form a class of parties, whose rights or liabilities arise out of the same transaction, * * * such distinct demands or liabilities cannot be aggregated together for the purpose of giving this court jurisdiction. * * * *Clay v. Field*, 138 U. S. 464, 11 Supt. Ct. 419, and cases there cited.'"

This Supreme Court in 180 U. S. 379, in affirming this decision says:

> "Accordingly, it has often been held that the distinct and separate interests of complainant in a suit for relief against assessment cannot be united for the purpose of making up the amount necessary to give this court or the Circuit Court jurisdiction. *Ogden City v. Armstrong*, 168 U. S. 224; *Russel v. Stansel*, 105 U. S. 303; *Walter v. N. E. R. R. Co.*, 147 U. S. 370.
>
> *The matter in dispute within the meaning of the statute is not the principle involved but the pecuniary consequence to the individual party dependent on the litigation as for instance in this suit the amount of the assessment levied or which may be levied as against each of the complainants separately.* The rule of law which might subject complain-

> ants to or relieve them from assessment would be applicable alike to all; but each would be subjected or relieved, in a certain sum, and not in the whole amount of the assessment. If a decision on the merits were adverse to the assessment, each of the complainants would be relieved from payment of less than $2,000. If the assessment were sustained, neither of them would be compelled to pay so much as that. It is true that the assessment has not been made but the charge is that it is threatened to be made, and the purpose of the bill is to enjoin proceedings about to be taken to that end. We agree with the Circuit Court that in these circumstances there is no force to the suggested distinction between a case where the assessment has not in fact been made and the case where it has already been made. When made, neither one of these complainants will be called upon to pay a sum equal to the amount of $2,000 nor will any one of the lots be assessed to that amount."

In *Russell v. Stansel*, 105 U. S. 303, the complainants, on behalf of themselves and a number of other persons affected by the same assessment, asked an injunction in the Federal Court to restrain the collection of the assessment on the ground of its illegality.

No single complainant could in any event be made liable for an amount exceeding $2,500. This court affirmed the dismissal of the action on the ground that the amount in controversy did not exceed $5,000. It was there said:

> "While the appellants and those whom they may have been chosen to represent are all interested in the question on which their liability to the appellee depend, *they are separately charged with the sev-*

eral amounts assessed against them. There is no joint responsibility resting on them as a body; the proceeding on his part was to require each of the several land owners in the levee district to pay his separate share of the debt that had been established against the district. The recovery was against each owner separately. While the appellants were permitted for convenience and to save expense, to unite in a petition setting forth the grievances of which complaint was made, their object was to relieve each separate owner from the amount of which he personally or his property was found to be accountable. An injunction if granted would necessarily be to prevent the appellee from collecting from each owner the amount for which he was separately liable. It is clear that under the ruling in *Paving Co. v. Mulford,* 100 U. S. 147; *Seaver v. Bigelow,* 5 Wall. 208; *Rich v. Lambert,* 12 Howe 347; *Stratton v. Jarvis,* 8 Pet. 4; and *Oliver v. Alexander,* 6 Pet. 143. Such distinct and separate interests cannot be united for the purpose of making up the amount necessary to give us jurisdiction on appeal. Although the amount due the appellee from the levee district exceeds $5,000 his claim on the several owners of the property is only assessed against them respectively."

See also—

Walter v. Northeastern Railway Company, 147 U. S. 370.

Henderson v. Wadsworth, 115 U. S. 264.

Farmers Loan & Trust Company v. Waterman, 106 U. S. 265.

Adams v. Crittendon, 106 U. S. 576.

Clay v. Field, 188 U. S. 479.

Gibson v. Shufeldt, 122 U. S. 27.

Davis v. Schwartz, 155 U. S. 647.

The rule is well stated in *Hogge v. Kansas City S. Railway Company,* 104 Fed. Reporter, 393, as follows:

> "The general rule in equity is that if several persons be joined in a suit in equity, and have a common and undivided interest, though separable as between themselves, the amount of their joint claim or liability will be the test of jurisdiction; but where their interests are distinct and they are joined for the sake of convenience only, or because they form a class of persons whose rights or liabilities arose out of the same transaction, or have relation to a common fund or mass of property sought to be administered, such distinct demands or liabilities cannot be aggregated together for the purpose of giving jurisdiction, but each must stand or fall by itself alone. The authorities governing this question are principally:
>
> Shields v. Thomas, 17 How. 3; 15 L. Ed. 93.
>
> Market Co. v. Hoffman, 101 U. S. 112; 25 L. Ed. 782."

The failure to voluntarily pay personal property taxes results in a personal money judgment against the owner, if he can be found within the jurisdiction of the state so that a tax citation can be served upon him.

The Minnesota Statutes on this subject are as follows:

SECTION 893, REVISED LAWS OF MINNESOTA FOR 1905.

"Within ten days after the adjournment of the county board, the auditor shall file a copy of such revised list with the clerk of the district court, and within ten days thereafter the clerk shall issue a citation to each delinquent named in the list, stating the amount of

the tax and penalty, and requiring such delinquent to appear on the first day of the next general term of the district court in the county, appointed to be held at a time not less than thirty days after the issuance of such citation, and show cause, if any there be, why he should not pay such tax and penalty. The citation shall be delivered for service to the sheriff of the county where such person may at the time reside or be. If such person, after service of the citation, fails to pay such tax, penalty and costs to the sheriff before the first day of the term, or on said day to show cause as aforesaid, the court shall direct judgment against him for the amount of such tax, penalty and costs. When the sheriff is unable to serve the citation, he shall return the same to the clerk, with his return thereto to that effect, and thereupon, or if the court decides that the service of such citation made or attempted to be made, or the issuance thereof by the clerk, was illegal, the clerk shall issue another like citation, requiring such delinquent to appear on the first day of the next general term to be held in the county, and show cause as aforesaid, and, if he fails to pay or to show cause, the court shall direct judgment as aforesaid. Whenever the sheriff has been unable to serve any such citation theretofore issued in any year or years, or whenever the court decides that the service of any such citation theretofore made or attempted to be made, or the issuance thereof by the clerk, was illegal, the clerk shall issue another like citation requiring such delinquent to appear, as in the case

last provided, and with like effect; Provided, that all citations other than the first shall be issued only on the request of the county attorney."

SECTION 901, REVISED LAWS OF 1905.

"Every judgment for personal property taxes shall be docketed, and thereafter shall become a lien upon the real property of the debtor in the county within which the judgment was rendered, to the same extent as other judgments for the recovery of money, and may be docketed in other counties in like manner and with like effect."

APPELLANTS' AUTHORITIES DISTINGUISHED.

The authorities relied upon by appellees are easily distinguishable from the case at bar. They may be briefly analyzed, discussed and disposed of as follows:

Hutchinson v. Beckham, 118 Federal Rep. 399, cited by appellants, is a case where the complainant was being rendered liable to a license tax. The tax was not a general or property tax. The ordinance under which it was levied by the city provided for criminal prosecutions, which prosecution might be repeated daily. The court said, in discussing this phase of the question, (page 402):

> "Our attention has been invited to several cases which were brought to enjoin the collection of taxes

that were alleged to be illegal, in which it was held that the amount in controversy for jurisdictional purposes was the amount of the tax (Transfer Co. v. Pendergrass, 16 C. C. A. 585, 70 Fed. 1; Walter v. Railroad Co., 147 U. S. 370, 13 Sup. Ct. 348, 37 L. Ed. 206; Railroad Co. v. Walker, 148 U. S. 391, 13 Sup. Ct. 650, 37 L. Ed. 494); but an examination of these cases shows that they are not analogous to the case at bar, in that it did not appear that the complainants would sustain any other direct damage save the amount of the tax, which, is paid under protest, they could recover it in an action at law, if the tax is found to be illegal. The present case is distinguishable from the cases relied upon by the appellants in that the tax involved is a license tax imposed by a municipality upon a business concern, the payment of which tax may be enforced by fining and imprisoning its employes and by daily arrests that will seriously interfere with the prosecution of complainants' business, and inflict a much greater direct loss than the amount of the tax. The suit at bar, in view of the allegations touching the effect upon the complainants' business, if the city is permitted to proceed with the enforcement of the ordinance in its own way, is in reality a bill to prevent the city from breaking up and destroying an established business under the guise of enforcing an illegal ordinance. The pecuniary loss which the complainants would sustain by such an interference with or destruction of their business may, as we think, be properly taken into account in determining the amount in controversy; and, as the bill alleges, and the demurrer admits that the damages incident to such wrongful conduct on the part of the city will exceed $2,000, we are of opinion that the jurisdiction of the Federal Court to entertain the bill was rightfully upheld. The decree below is accordingly affirmed."

Thus it will be seen that in that case the court clearly distinguished it from the line of cases, of which the

case at bar is one, and upheld the Federal jurisdiction on other grounds.

The case of the *Board of Trade of the City of Chicago v. the Cella Commission Company, et al.*, 145 Fed. 28, cited by Counsel, was a case where an injunction was sought restraining the Cella Commission Company from using its market quotations, and the court held that for jurisdictional purposes, the amount involved was the value of the right complainant seeks to protect from invasion, and not the sum he might recover from an action at law for the damage already sustained; nor is he required to wait until it reaches the jurisdictional amount. This case was one where the Board of Trade had sold its quotations for $30,000, and the court says on the top of page 30:

> "The contract obligates the Board of Trade to use all reasonable endeavors to protect its property right in the quotations against purloiners thereof."

Here, the Court will observe, was a right which was worth $30,000, and was being appropriated by the defendant in that case and the court said that that was the amount in controversy, so the court had jurisdiction.

The case of *Hunt v. The New York Cotton Exchange*, 205 U. S. 322, cited by Counsel, involved nearly the same question, the taking of market quotations which had been sold under a contract, and the court held that the amount in controversy was not the amount that parties might receive at stated periods for the use of such quotations, but the value of the right of the exchange

to keep the control of the quotations and protect itself from competition which is the object of the suit. And the testimony in that case showed that the value of the right exceeded $2,000, and, therefore, was within the jurisdiction of the court.

The case of *Scott v. Donald*, 165 U. S. 107, cited by Counsel, was a case where complainant was importing liquors into the state. The officers of the state were seizing these liquors and destroying them as he claimed in violation of his constitutional rights and the court held that the amount in controversy was not the value of the liquors seized at any one time, but the value of his right to so import liquors and held that it had jurisdiction.

The stipulation of facts in that case was to the effect that the constable intended to seize and was threatening to seize all liquors so imported and that the value of the right of importation of ales, wines and other liquors, the products of other states and countries, was of greater value than of the jurisdictional amount necessary.

Thus it will be seen that the parties in that case stipulated that the amount in controversy was more than the requisite jurisdictional amount.

In the case of *Washington Market Company v. Hoffman*, 101 U. S. 112, the court below enjoined a sale of certain premises owned by the defendant, the value of which premises was $60,000, upon the petition of two

hundred five plaintiffs, no one of whom had interest in the jurisdictional amount. The decree enjoined the sale, the property was of the value of $60,000. The question arose as to rights on appeal and the court held that the value to the defendant in the lower court to the right which was enjoined was the amount in controversy.

The case of *Davies v. Corbin,* 112 U. S. 36, was a case where the tax collector in a certain district levied a tax to pay a number of judgment creditors, the aggregate of whose claims was over $5,000. A property owner objected to the assessment; the collector stopped collection; and the judgment creditors asked for a writ of mandamus compelling the tax collector to proceed with the collection of the tax. The court said:

> "The writ which has been ordered in this case is not like that in *Hawley v. Fairbanks,* 108 U. S. 543, to compel the levy of taxes to pay separate and distinct judgments in favor of several relators who, for convenience and to save expense, united in one suit to enforce their respective rights. But to compel a tax collector to collect a single tax which has been levied for the joint benefit of all the relators and in which they have a common and undivided interest."

Thus it will be seen that the collector could not have been compelled to levy the tax for one creditor in this case unless he levied the whole tax and the whole tax being above the jurisdictional amount, the court retained jurisdiction.

The case of *McDaniel, et al., v. Traylor, et al.*, 123 Fed. 338, and 196 U. S. 415, in which the Supreme Court reversed the lower court on a question of jurisdiction was a case where certain heirs of the deceased, receiving real estate from the estate of the deceased, brought an action to cancel certain fraudulent judgments, the total of which judgments exceeded the jurisdictional amount. The judgments all arose out of the same transaction and were all fraudulent judgments. They were procured by the defendants acting in fraudulent combination, and the court said:

> "By reason of the combination resulting in the allowance of all those claims in the probate court, as expenses of administrating the estate of Hiram Evans, the defendants have so tied their respective claims together as to make them, so far as the plaintiffs and the relief sought by them are concerned, one claim."

This Court, in its opinion (196 U. S. 427), said that the case may be regarded as exceptional in its facts and may be disposed of without affecting former decisions. This Court said on page 431:

> "The plaintiffs make no contest as to particular claims. They dispute all of them as claims against Hiram Evans' estate. If the orders of the probate court stand for the benefit of respective parties, then the plaintiff's interests in the amounts are liable for all the claims asserted by the defendants * * * hence, as we have said, the value of the matter in dispute is the aggregate amount of the claims fraudulently procured by the defendants acting in combination to be allowed by the probate court as claims against the estate of Hiram Evans."

The property in this case upon which these fraudulent judgments were procured by the same transaction, i. e., the same fraudulent conspiracy by the defendants jointly, was of the value of $16,000, and the benefit to the plaintiffs by the cancelling of these judgments was the aggregate of all of the claims.

The case apparently chiefly relied upon by Appellants is *Berryman v. Board of Trustees of Whitman College,* 222 U. S. 234. Appellants argue from this case that in the case at bar they have a right to anticipate that in the years to come the taxing authorities in Minnesota will continue to tax them for these memberships, and that the aggregate of such taxes projected through all time, will exceed the jurisdictional amount for each individual plaintiff. This argument is as ridiculous as it is novel. It assumes primarily that such memberships are not taxable when the highest state courts have since held them to be taxable. It also assumes that the tax each year would be substantially the same as at present and that each plaintiff would continue to own his membership for about 90 years more, notwithstanding his present age and expectancy of life.

It also assumes that the corporate existence of the Chamber of Commerce would continue for that length of time. The record is silent as to when the Chamber of Commerce was incorporated, but when it was organized its statutory life was limited to 30 years. See Section 6156, G. S. 1913, part of which reads as follows:

> "A railroad corporation may be formed for any period specified in its certificate of incorporation.

> A savings bank shall have perpetual succession. Every other corporation shall be formed for a period not exceeding thirty years in the first instance, but may be renewed from time to time for a further term not exceeding 30 years, etc."

If future taxes could be considered in making up the jurisdictional amount, then any tax case, no matter how small the tax might be, would be within the jurisdiction of the Federal Courts.

Said case of *Berryman v. Board of Trustees, Supra,* is neither parallel with nor analogous to the case at bar. It is not even an authority for the Appellants' above peculiar argument. In the Berryman case an attempt was made by the legislature to tax property which the legislature itself had previously exempted from taxation; this exemption when relied on by the college constituted a contract. The legislature subsequently attempted to tax the college. The court decided on the question of jurisdiction that the college was entitled to figure in the amounts it would have to pay in the future, in case the tax was sustained, in arriving at the jurisdictional amount; that is, it decided that the value of the *Contract Rights* could be computed in determining the question of jurisdiction. This simply follows the well known principle of the law that where a party suffered damages by reason of breach or impairment of a contract right, he is entitled to prospective as well as present damage. In the case at bar, we have no contract rights involved. Therefore, this case can have no application.

In the case above on page 345 bearing on this question of contract rights, the court said:

> "Considering the averments of the bill, the amount and value of the property of the corporation and the nature and character of the contract of exemption asserted, it cannot be doubted that the value of the thing in issue, *the Contract Right*, exceeded in value the jurisdictional amount, *granting that the uncertainties of the future and the shifting ownership of property forbids in a contest merely over the validity of a tax adding the sum of future taxes which might be levied to the amount of taxes naturally levied for the purpose of jurisdiction, that principle can have no application to a case where the issue presented is not only the right to collect, but also to levy all future taxes. The admission that the right to tax may be abridged by contract, and that such contract may not be impaired without violating the constitution carries with it of necessity the power and duty to protect the contract right, and in the nature of things causes jurisdiction for such purpose to be measured by the value of the right to be protected and not by the value of some mere isolated element of that right.*"

The court clearly in this case distinguished between contract rights and cases where taxes were levied in the regular ways provided by law and assumed that the "uncertainties of the future" and the "shifting ownership of property" forbids the computation of taxes that might be levied in the future.

No case cited by Appellants supports their contention that possible future taxes can be added to the amount of an alleged illegal tax involved at present, in order to make the jurisdictional amount, required by Federal

courts. The mere fact that these Appellants have a joint and common interest in the question of law involved in the litigation is not sufficient to entitle them to aggregate their claims in this proceeding. The using of possible or imaginary future taxes is disposed of in this Court in the case of Holt v. Indiana Mfg. Co., 176 U. S. 68-72, where this Court said:

> "Treating this bill as setting up a case arising under the Constitution or laws of the U. S. on the ground that the laws of Indiana authorized the taxation in question, and were therefore because patent rights granted by the U. S. could not be subjected to the state taxation, or because the obligation of the contract existing between the inventor and the general public would thereby be impaired, or for any other reason, the difficulty is that the pecuniary limitation of over two thousand dollars applied, and the taxes in question did not reach that amount, and the effect on future taxation of a decision that the particular taxation is invalid cannot be availed to add to the sum or value of the matter in dispute."

See also N. E. Mortgage Company v. Guy, 145 U. S. 123.

Clay Center v. Farmers L. & T. Co., 145 U. S. 224.

Citizens Bank v. Cannon, 164 U. S. 319.

Therefore, the order made by the learned trial court in dismissing this action for want of Federal jurisdiction was correct. The reasons stated in that order were sound. Since then, the decision of the State Court has

finally set at rest the legality of the tax here assailed, and the case is now a moot one.

Respectfully submitted,

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ROGERS v. HENNEPIN COUNTY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

No. 411. Argued December 6, 1915.—Decided January 17, 1916.

In an action brought by a number of complainants to restrain the collection of a tax separately assessed against each for under forty dollars, the aggregate exceeding the jurisdictional amount, *held* that the District Court did not have jurisdiction, as the amount as to each complainant was the sum charged against him, and demands against all could not be aggregated in order to confer jurisdiction. *Wheless* v. *St. Louis*, 180 U. S. 379.

THE facts, which involve the method of determining the amount in controversy in order to give jurisdiction to the District Court, are stated in the opinion.

Mr. H. V. Mercer for appellants.

Mr. Lyndon A. Smith, Attorney General of the State of Minnesota, with whom *Mr. William J. Stevens* and *Mr. John M. Rees* were on the brief, for appellees.

MR. JUSTICE MCREYNOLDS delivered the opinion of the court.

Three complainants, claiming to represent themselves and others like situated (numbering altogether 550), instituted this proceeding in equity against Hennepin County, Minnesota, and certain of its officers, in the District Court of the United States, seeking an injunction to prevent collection of a tax under forty dollars assessed against each of them, for the year 1913, on account of his membership in the Minneapolis Chamber of Commerce.

Defendants challenged the court's power to entertain the cause upon the ground that the amount in controversy as to each complainant is the sum charged against him and demands against all cannot be aggregated in order to confer jurisdiction. The District Court sustained this objection upon authority of *Wheless* v. *St. Louis*, 180 U. S. 379, and dismissed the bill. It committed no error in so doing, and its judgment is

Affirmed.